

ENGROSSED LEGISLATIVE BILL 453

Introduced by DeBoer, 10.

A BILL FOR AN ACT relating to guardians and conservators; to amend section 30-2630.01, Reissue Revised Statutes of Nebraska, and sections 30-2602.02 and 30-2626, Revised Statutes Cumulative Supplement, 2024; to change requirements for background checks; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 30-2602.02, Revised Statutes Cumulative Supplement, 2024, is amended to read:

30-2602.02 (1) A person, except for a financial institution as that term is defined in section 8-101.03 or its officers, directors, employees, or agents or a trust company, who has been nominated for appointment as a guardian or conservator shall authorize the Nebraska State Patrol to submit the fingerprints of such applicants to the Federal Bureau of Investigation and to issue a report to the State Court Administrator that includes the criminal history record information concerning the applicant. The Nebraska State Patrol shall forward submitted fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The Nebraska State Patrol shall issue a report to the State Court Administrator that includes the criminal history record information concerning the applicant and file such report with the court at least ten days prior to the appointment hearing date, unless waived or modified by the court (a) for good cause shown by affidavit filed simultaneously with the petition for appointment or (b) in the event the protected person requests an expedited hearing under section 30-2630.01. The applicant shall pay the actual cost of the fingerprinting and criminal background check.

(2) An order appointing a guardian or conservator shall not be signed by the judge until such report has been filed with the court and reviewed by the

judge. Such report, or the lack thereof, shall be certified either by affidavit or by obtaining a certified copy of the report. No report or national criminal history record check shall be required by the court upon the application of a petitioner for an emergency temporary guardianship or emergency temporary conservatorship. The court may waive the requirements of this section for good cause shown.

Sec. 2. Section 30-2626, Revised Statutes Cumulative Supplement, 2024, is amended to read:

30-2626 (a)(1) If a person alleged to be incapacitated has no guardian and an emergency exists, the court may, pending notice and hearing, exercise the power of a guardian or enter an ex parte order appointing a temporary guardian to address the emergency. The order and letters of temporary guardianship shall specify the powers and duties of the temporary guardian, limiting the powers and duties to those necessary to address the emergency.

(2)(i) For purposes of this subdivision (a)(2):

(A) Benefits means private or government benefits to which a person alleged to be incapacitated may be entitled; and

(B) Covered county means a county containing a city of the metropolitan class or a city of the primary class.

(ii) Subject to subsection (k) of this section, if a person alleged to be incapacitated has no guardian and an emergency exists, the court in a covered county may, pending notice and hearing, enter an ex parte order appointing a temporary guardian for the limited purpose of assisting the person in applying for, validating, and facilitating eligibility for benefits.

(iii) The limited temporary guardian may access personal and financial records of such person as necessary to apply for, validate, and facilitate eligibility for benefits. The order and letters of limited temporary guardianship shall limit the powers and duties to those necessary to carry out this subdivision (a)(2).

(iv) Third parties, including, but not limited to, financial institutions, in possession of such person's financial and personal records related to

eligibility for benefits shall provide the limited temporary guardian access to such records. Records to which a limited temporary guardian may be entitled include, but are not limited to, records relating to: Checking, savings, or other bank accounts; household expenses; health, life, or other insurance; wages; pensions; annuities; real property; trusts; burial plans; retirement accounts; stocks and bonds; farm and business equipment; motor vehicles, boats, and motor homes; immigration status; land contracts; promissory notes and loans; social security benefits; credit cards; taxes; or any other asset.

(b) When the court takes action to exercise the powers of a guardian or to appoint a temporary guardian under subsection (a) of this section, an expedited hearing shall be held if requested by the person alleged to be incapacitated, or by any interested person, if the request is filed more than ten business days prior to the date set for the hearing on the petition for appointment of the guardian. If an expedited hearing is to be held, the hearing shall be held within ten business days after the request is received. At the hearing on the temporary appointment, the petitioner shall have the burden of showing by a preponderance of the evidence that temporary guardianship continues to be necessary to address the emergency situation. Unless the person alleged to be incapacitated has counsel of his or her own choice, the court may appoint an attorney to represent the person alleged to be incapacitated at the hearing as provided in section 30-2619.

(c) If an expedited hearing is requested, notice shall be served as provided in section 30-2625. The notice shall specify that a temporary guardian has been appointed and shall be given at least twenty-four hours prior to the expedited hearing.

(d) At the expedited hearing, the court may render a judgment authorizing the temporary guardianship to continue beyond the original ten-day period. The judgment shall prescribe the specific powers and duties of the temporary guardian in the letters of temporary guardianship and shall be effective for a single ninety-day period. For good cause shown, the court may extend the temporary guardianship for successive ninety-day periods.

(e)(1) The temporary guardianship shall terminate at the end of the ninety-day period in which the temporary guardianship is valid or at any time prior thereto if the court deems the circumstances leading to the order for temporary guardianship no longer exist or if an order has been entered as a result of a hearing pursuant to section 30-2619 which has been held during the ninety-day period.

(2) When the duties of a limited temporary guardian appointed pursuant to subdivision (a)(2) of this section have not been completed within ninety days, the court shall accept notification by such guardian as good cause for extending the limited temporary guardianship for an additional ninety days.

(f) If the court denies the request for the ex parte order, the court may, in its discretion, enter an order for an expedited hearing pursuant to subsections (b) through (e) of this section.

(g) If the petitioner requests the entry of an order of temporary guardianship pursuant to subsection (a) of this section without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsections (b) through (e) of this section.

(h) If an appointed guardian is not effectively performing his or her duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, pending notice and hearing in accordance with section 30-2220, appoint a temporary guardian for the incapacitated person for a specified period not to exceed ninety days. For good cause shown, the court may extend the temporary guardianship for successive ninety-day periods. A temporary guardian appointed pursuant to this subsection has only the powers and duties specified in the previously appointed guardian's letters of guardianship, and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority.

(i) A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires, except that a temporary guardian shall not be required to provide the fingerprints for the national criminal history record information check or report under section 30-2602.02. In other

respects the provisions of the Nebraska Probate Code concerning guardians apply to temporary guardians.

(j) The court may appoint the Public Guardian as the temporary guardian pursuant to the Public Guardianship Act.

(k)(1) If the Public Guardian is unable to accept appointment as a limited temporary guardian for the purposes described in subdivision (a)(2) of this section because the Public Guardian has exceeded the average ratio described in subsection (2) of section 30-4115, the court shall appoint an individual to serve as a limited temporary guardian. Appointments of such limited temporary guardians shall be subject to the availability of funds appropriated as described in section 81-3141. When such funds have been exhausted in a fiscal year, no further appointments shall be made.

(2) An individual appointed as a limited temporary guardian pursuant to subdivision (a)(2) of this section shall apply to the court for expenses and fees for services performed. The court, upon hearing the application, shall fix reasonable expenses and fees, and the county board shall pay such guardian in the full amount determined by the court. The court shall set such expenses and fees at levels that: (i) Are similar to expenses and fees paid to guardians and guardians ad litem for comparable work in other legal proceedings in the county; and (ii) are intended to incentivize qualified individuals to provide high-quality services as limited temporary guardians.

(3) A county that has paid expenses and fees as provided in subdivision (k)(2) of this section may apply under section 81-3141 for reimbursement.

Sec. 3. Section 30-2630.01, Reissue Revised Statutes of Nebraska, is amended to read:

30-2630.01 (a) If a person alleged to be in need of protection under section 30-2630 has no conservator and an emergency exists, the court may, pending notice and hearing, exercise the power of a conservator or enter an emergency protective order appointing a temporary conservator, who may be the Public Guardian, to address the emergency.

(b) When the court takes action to exercise the powers of a conservator or

to appoint a temporary conservator under subsection (a) of this section, an expedited hearing shall be held if requested by the person alleged to be in need of protection, or by any interested person, if the request is filed more than ten business days prior to the date set for the hearing on the petition for appointment of the conservator. If an expedited hearing is to be held, the hearing shall be held within ten business days after the request is received. At the hearing on the temporary appointment, the petitioner shall have the burden of showing by a preponderance of the evidence that temporary conservatorship continues to be necessary to address the emergency situation. Unless the person alleged to be in need of protection has counsel of his or her own choice, the court may appoint an attorney to represent the person at the hearing as provided in section 30-2636.

(c) If an expedited hearing is requested, notice shall be served as provided in section 30-2634. The notice shall specify that a temporary conservator has been appointed and shall be given at least twenty-four hours prior to the expedited hearing.

(d) At the expedited hearing, the court may render a judgment authorizing the temporary conservatorship to continue beyond the original ten-day period. The judgment shall prescribe the specific powers and duties of the temporary conservator in the letters of temporary conservatorship and shall be effective for a ninety-day period. For good cause shown, the court may extend the temporary conservatorship for successive ninety-day periods.

(e) The temporary conservatorship shall terminate at the end of the ninety-day period in which the temporary conservatorship is valid or at any time prior thereto if the court deems the circumstances leading to the order for temporary conservatorship no longer exist or if an order has been entered as a result of a hearing pursuant to section 30-2636 which has been held during the ninety-day period.

(f) If the court denies the request for the ex parte order, the court may, in its discretion, enter an order for an expedited hearing pursuant to subsections (b) through (e) of this section.

(g) If the petitioner requests the entry of an order of temporary conservatorship pursuant to subsection (a) of this section without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsections (b) through (e) of this section.

(h) A temporary conservator may be removed at any time. A temporary conservator shall make any report the court requires, except that a temporary conservator shall not be required to provide the fingerprints for the national criminal history record information check and report under section 30-2602.02. In other respects the provisions of the Nebraska Probate Code concerning conservators apply to temporary conservators.

Sec. 4. Original section 30-2630.01, Reissue Revised Statutes of Nebraska, and sections 30-2602.02 and 30-2626, Revised Statutes Cumulative Supplement, 2024, are repealed.

PRESIDENT OF THE LEGISLATURE

*THIS IS TO CERTIFY that the within LB 453 was passed by the One Hundred Ninth
Legislature of Nebraska at its First Session on the day
of 20.....*

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR