

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1178

Introduced by DeBoer, 10.

Read first time January 21, 2026

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Nebraska Probate Code; to amend
- 2 sections 30-2619, 30-2623, 30-2625, 30-2627, and 30-2636, Reissue
- 3 Revised Statutes of Nebraska; to allow an incapacitated person,
- 4 ward, minor, or protected person to attend hearings relating to
- 5 guardianships virtually; to change provisions relating to duties of
- 6 guardians; to provide for awards of costs and expenses, including
- 7 attorney's fees, in certain judicial proceedings; and to repeal the
- 8 original sections.
- 9 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 30-2619, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 30-2619 (a) The person alleged to be incapacitated or any person
4 interested in his or her welfare may petition for a finding of incapacity
5 and appointment of a guardian or a standby guardian. The petition shall
6 be verified and shall contain specific allegations with regard to each of
7 the areas as provided under section 30-2619.01 in which the petitioner
8 claims that the person alleged to be incapacitated lacks sufficient
9 understanding to make or communicate responsible decisions concerning his
10 or her own person. An interested person may file a motion to make more
11 definite and certain requesting a specific description of the functional
12 limitations and physical and mental condition of the person alleged to be
13 incapacitated with the specific reasons prompting the request for
14 guardianship.

15 (b) Upon the filing of a petition, the court shall set a date for
16 hearing on the issues of incapacity and unless the person alleged to be
17 incapacitated has retained counsel of his or her own choice or has
18 otherwise indicated a desire for an attorney of his or her own choice,
19 the court may appoint an attorney to represent him or her in the
20 proceeding. The court may appoint a guardian ad litem as provided in
21 sections 30-4201 to 30-4210 to advocate for the best interests of the
22 person alleged to be incapacitated.

23 (c) The person alleged to be incapacitated may be examined by a
24 physician appointed by the court. The physician shall submit his or her
25 report in writing to the court and may be interviewed by a visitor, if so
26 appointed pursuant to sections 30-2619.01 and 30-2624, sent by the court.

27 (d) The person alleged to be incapacitated is entitled to be present
28 at the hearing virtually or in person and to see and hear all evidence
29 bearing upon his or her condition. He or she is entitled to be present by
30 counsel, to compel the attendance of witnesses, to present evidence, to
31 cross-examine witnesses, including the court-appointed physician and the

1 visitor appointed by the court pursuant to sections 30-2619.01 and
2 30-2624, and to appeal any final orders or judgments. The issue may be
3 determined at a closed hearing only if the person alleged to be
4 incapacitated or his or her counsel so requests.

5 (e) At any hearing conducted under this section, the court may
6 designate one or more standby guardians of the person whose appointment
7 will become effective immediately upon the death, unwillingness or
8 inability to act, resignation, or removal by the court of the initially
9 appointed guardian and upon compliance with any rules promulgated by the
10 Supreme Court. The standby guardian shall have the same powers and duties
11 as the initially appointed guardian. The standby guardian shall receive a
12 copy of the order establishing or modifying the initial guardianship and
13 the order designating the standby guardian. Upon assuming office, the
14 standby guardian shall so notify the court in writing. Upon notification
15 and upon compliance with any rules promulgated by the Supreme Court, the
16 court shall issue new letters of guardianship that specify that the
17 standby guardianship appointment is permanent. A standby guardian shall
18 complete the training required by section 30-2601.01 at the time or times
19 required by rules promulgated by the Supreme Court or as otherwise
20 provided by order of the county court.

21 (f) The Public Guardian shall not be appointed as a standby
22 guardian.

23 **Sec. 2.** Section 30-2623, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 30-2623 (a) On petition of the ward or any person interested in the
26 ward's his welfare, the court may remove a guardian and appoint a
27 successor if in the best interests of the ward. On petition of the
28 guardian, the court may accept the guardian's his resignation and make
29 any other order which may be appropriate.

30 (b) An order adjudicating incapacity may specify a minimum period,
31 not exceeding one year, during which no petition for an adjudication that

1 the ward is no longer incapacitated may be filed without special leave.
2 Subject to this restriction, the ward or any person interested in the
3 ward's his welfare may petition for an order that the ward he is no
4 longer incapacitated, and for removal or resignation of the guardian. A
5 request for this order may be made by informal letter to the court or
6 judge and any person who knowingly interferes with transmission of this
7 kind of request to the court or judge may be adjudged guilty of contempt
8 of court.

9 (c) Before removing a guardian, accepting the resignation of a
10 guardian, or ordering that a ward's incapacity has terminated, the court,
11 following the same procedures to safeguard the rights of the ward as
12 apply to a petition for appointment of a guardian, may send a visitor to
13 the residence of the present guardian and to the place where the ward
14 resides or is detained, to observe conditions and report in writing to
15 the court.

16 (d) In any court hearing under this section, the ward shall have the
17 right to attend the hearing virtually or in person.

18 **Sec. 3.** Section 30-2625, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 30-2625 (a) In a proceeding for the appointment of a guardian for a
21 person alleged to be incapacitated or the removal of a guardian of a ward
22 other than the appointment of a temporary guardian or temporary
23 suspension of a guardian, notice of hearing shall be given to each of the
24 following:

25 (1) The ward or the person alleged to be incapacitated and his or
26 her spouse, parents, and adult children;

27 (2) Any person who is serving as guardian or conservator of the ward
28 or who has care and custody of a person alleged to be incapacitated; and

29 (3) If no other person is notified under subdivision (1) of this
30 subsection, at least one of the closest adult relatives of the ward or
31 person alleged to be incapacitated, if any can be found.

1 (b) Notice which is appropriate to the circumstances of the ward or
2 person alleged to be incapacitated shall be served personally at least
3 fourteen days prior to the hearing on the ward or person alleged to be
4 incapacitated and his or her spouse and parents if they can be found
5 within the state. The court may require the petitioner to serve notice in
6 alternative formats or with appropriate auxiliary aids and services if
7 necessary to ensure equally effective communication with the ward or
8 person alleged to be incapacitated, including, but not limited to, the
9 use of braille, sign language, large print, reading aloud, or other
10 reasonable accommodation for the known disabilities of the individual
11 based on the allegations specified in the petition. Waiver of notice by
12 the person alleged to be incapacitated shall not be effective unless he
13 or she attends the hearing and the court determines that the waiver is
14 appropriate.

15 (c) In addition to notifying him or her of the filing of the
16 petition and the time and place of the hearing on the petition, the
17 notice required to be served upon the person alleged to be incapacitated
18 shall list the following rights of the person:

- 19 (1) The right to request the appointment of an attorney;
20 (2) The right to present evidence in his or her own behalf;
21 (3) The right to request that the power of the guardian, if
22 appointed, be limited by the court;
23 (4) The right to be notified regarding how to contact the temporary
24 guardian if a temporary guardian is appointed;
25 (5) The right to compel attendance of witnesses;
26 (6) The right to cross-examine witnesses, including the court-
27 appointed physician;
28 (7) The right to appeal any final order; ~~and~~
29 (8) The right to request a hearing closed to the public; and -
30 (9) The right to attend each court hearing virtually or in person,
31 including a hearing held on the original petition, a hearing held

1 regarding a change or termination of a guardian, and a show cause
2 hearing.

3 (d) If a temporary guardian has been appointed, the notice required
4 in subsection (c) of this section shall include a notice of such
5 appointment and of the right to request an expedited hearing pursuant to
6 section 30-2626.

7 **Sec. 4.** Section 30-2627, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 30-2627 (a) Any competent person or the Public Guardian may be
10 appointed guardian of a person alleged to be incapacitated, except that
11 it shall be unlawful for any agency providing residential care in an
12 institution or community-based program, or any owner, part owner,
13 manager, administrator, employee, or spouse of an owner, part owner,
14 manager, administrator, or employee of any nursing home, room and board
15 home, assisted-living facility, or institution engaged in the care,
16 treatment, or housing of any person physically or mentally handicapped,
17 infirm, or aged to be appointed guardian of any such person residing,
18 being under care, receiving treatment, or being housed in any such home,
19 facility, or institution within the State of Nebraska. Nothing in this
20 subsection shall prevent the spouse, adult child, parent, or other
21 relative of the person alleged to be incapacitated from being appointed
22 guardian or prevent the guardian officer for one of the Nebraska veterans
23 homes as provided in section 80-327 from being appointed guardian or
24 conservator for the person alleged to be incapacitated. It shall be
25 unlawful for any county attorney or deputy county attorney appointed as
26 guardian for a person alleged to be incapacitated to circumvent his or
27 her duties or the rights of the ward pursuant to the Nebraska Mental
28 Health Commitment Act by consenting to inpatient or outpatient
29 psychiatric treatment over the objection of the ward.

30 (b) Persons who are not disqualified under subsection (a) of this
31 section and who exhibit the ability to exercise the powers to be assigned

1 by the court have priority for appointment as guardian in the following
2 order:

3 (1) A person nominated most recently by one of the following
4 methods:

5 (i) A person nominated by the incapacitated person in a power of
6 attorney or a durable power of attorney;

7 (ii) A person acting under a power of attorney or durable power of
8 attorney; or

9 (iii) A person nominated by an attorney in fact who is given power
10 to nominate in a power of attorney or a durable power of attorney
11 executed by the incapacitated person;

12 (2) The spouse of the incapacitated person;

13 (3) An adult child of the incapacitated person;

14 (4) A parent of the incapacitated person, including a person
15 nominated by will or other writing signed by a deceased parent;

16 (5) Any relative of the incapacitated person with whom he or she has
17 resided for more than six months prior to the filing of the petition;

18 (6) A person nominated by the person who is caring for him or her or
19 paying benefits to him or her;

20 (7) The Public Guardian.

21 (c) When appointing a guardian, the court shall take into
22 consideration the expressed wishes of the allegedly incapacitated person.
23 The court, acting in the best interest of the incapacitated person, may
24 pass over a person having priority and appoint a person having lower
25 priority or no priority. With respect to persons having equal priority,
26 the court shall select the person it deems best qualified to serve.

27 (d) In its order of appointment, unless waived by the court, the
28 court shall require any person appointed as guardian to successfully
29 complete within three months of such appointment a training program
30 approved by the Public Guardian. If the person appointed as guardian does
31 not complete the training program, the court shall issue an order to show

1 cause why such person should not be removed as guardian.

2 (e) The court may require a guardian to furnish a bond in an amount
3 and conditioned in accordance with the provisions of sections 30-2640 and
4 30-2641. The Public Guardian shall not be required to post bond.

5 (f) A guardian shall monitor the ward or protected person and his or
6 her care on a continuing basis no less than once per month. The guardian
7 shall maintain a written record of each visit with a ward or protected
8 person and shall have periodic contact with all public or private
9 individuals and agencies that provide care or related services to the
10 ward or protected person.

11 **Sec. 5.** Section 30-2636, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 30-2636 (a) Upon receipt of a petition for appointment of a
14 conservator or other protective order because of minority, the court
15 shall set a date for hearing on the matters alleged in the petition. If,
16 at any time in the proceeding, the court determines that the interests of
17 the minor are or may be inadequately represented, the court may appoint
18 an attorney to represent the minor, giving consideration to the choice of
19 the minor if he or she is fourteen years of age or older. A lawyer
20 appointed by the court to represent a minor as provided in sections
21 30-4201 to 30-4210 has the powers and duties of a guardian ad litem.

22 (b) Upon receipt of a petition for appointment of a conservator or
23 other protective order for reasons other than minority, the court shall
24 set a date for hearing. Unless the person to be protected has counsel of
25 his or her own choice, the court may appoint an attorney to represent him
26 or her in the proceeding. The court may appoint a guardian ad litem as
27 provided in sections 30-4201 to 30-4210 to advocate for the best
28 interests of the person to be protected. If the alleged disability is
29 mental illness, mental deficiency, physical illness or disability,
30 chronic use of drugs, or chronic intoxication, the court may direct that
31 the person to be protected be examined by a physician designated by the

1 court, preferably a physician who is not connected with any institution
2 in which the person is a patient or is detained. The court may send a
3 visitor to interview the person to be protected. The visitor may be a
4 guardian ad litem or an officer or employee of the court.

5 (c) The minor or person to be protected under subsections (a) and
6 (b) of this section shall have the right to attend each court hearing
7 virtually or in person.

8 (d) (e) After hearing, upon finding that clear and convincing
9 evidence exists for the appointment of a conservator or other protective
10 order, the court shall make an appointment or other appropriate
11 protective order.

12 **Sec. 6.** In any judicial proceeding involving the appointment of a
13 guardian or a conservator, the administration of a guardianship or
14 conservatorship, or an accounting for a guardianship or a
15 conservatorship, the court, as justice and equity may require, may award
16 costs and expenses, including reasonable attorney's fees, to any party,
17 to be paid by another party or from the trust that is the subject of the
18 controversy.

19 **Sec. 7.** Original sections 30-2619, 30-2623, 30-2625, 30-2627, and
20 30-2636, Reissue Revised Statutes of Nebraska, are repealed.