

Committee: Senate Judiciary

Thursday, March 02, 2023 7:45 AM

Roll Call

Present: Sen. Diedrich, Sen. Hoffman, Sen. Mehlhaff, Sen. Rohl, Sen. Wheeler, and Sen. Stalzer

Excused: Sen. Duhamel

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Senator Duhamel

MOTION: TO APPROVE THE MINUTES OF THURSDAY, MARCH 16TH

Moved by: Diedrich
Second by: Rohl
Action: Prevailed by voice vote

VAUGHN BECK , TO THE BOARD OF PARDONS AND PAROLES

Presented by: Marty Jackley, South Dakota Attorney General, Pierre Vaughn Beck, Self, Ipswich

MOTION: THAT THE SENATE ADVISE AND CONSENT TO THE APPOINTMENT OF VAUGHN BECK, TO THE BOARD OF PARDONS AND PAROLES

Moved by: Hoffman
Second by: Wheeler
Action: Prevailed by Majority Members Elect (6-0-1-0)

Voting Yes: Diedrich, Hoffman, Mehlhaff, Rohl, Wheeler, and Stalzer

Excused: Duhamel

HB 1098 : revise provisions related to juror compensation.

Presented by: Representative Tim Reisch (Handout(s) HO#1, HO#2)
Proponents: Pat Pardy, self, Howard Representative Scott Moore Steve Siegel, South Dakota Trial Lawyers Association, Pierre Greg Sattizahn, Unified Judicial System Mark Barnett, Self, Pierre
Opponents: Senator Randy Deibert Lori Jacobson, Hughes County Commission (Handout(s) HO#3) Kristie Jacobsen, South Dakota Association of County Commissioners, Pierre Gary Drewes, Pennington County Commission, Rapid City
Others: Connie Hohn, Self, Pierre

MOTION: DEFER HB 1098 TO THE 41ST LEGISLATIVE DAY

Moved by: Duhamel
Second by: Hoffman
Action: Prevailed by Majority Members Elect (5-2-0-0)

Voting Yes: Diedrich, Hoffman, Mehlhaff, Stalzer, and Duhamel

Voting No: Rohl and Wheeler

HB 1170 : establish mandatory sentences for certain driving while under the influence violations.

Presented by: Representative Chris Karr (Handout(s) HO#4, HO#5)

Proponents: Greg Sattizahn, Unified Judicial System
Richard Tieszen, South Dakota Sheriffs' Association, Eureka
Charles McGuigan, Attorney General
Representative Mike Stevens

Opponents: Grant M. Flynn, South Dakota State's Attorneys Association, Pierre
Traci Smith, Self, Sioux Falls
Justin Bell, South Dakota Association of Criminal Defense Lawyers, Rapid City (Handout(s) HO#6, HO#7)
Steve Siegel, South Dakota Trial Lawyers Association, Pierre

MOTION: DO PASS HB 1170

Moved by: Hoffman

Second by: Stalzer

Action: Prevailed by Majority Members Elect (5-1-1-0)

Voting Yes: Hoffman, Mehlhaff, Rohl, Stalzer, and Duhamel

Voting No: Wheeler

Excused: Diedrich

HB 1160 : limit probation for offenders with four or more felony convictions.

Presented by: Representative Chris Karr

MOTION: TO TABLE HB 1160

Moved by: Rohl

Second by: Stalzer

Action: Prevailed by Majority Members Elect (6-0-1-0)

Voting Yes: Hoffman, Mehlhaff, Rohl, Wheeler, Stalzer, and Duhamel

Excused: Diedrich

HB 1240 : amend provisions addressing guardianships and conservatorships.

Presented by: Representative Greg Jamison

Proponents: Cole Uecker, Disability Rights South Dakota, Pierre
Erik Nelson, AARP South Dakota, Sioux Falls

MOTION: AMEND HB 1240

1240B

- On page 1, line 7, of the House Judiciary Engrossed bill, after "evidence. " delete "A person designated under a validly executed power of attorney by the person alleged to be in need of protection must be considered as a nominee. "
- On page 1, line 10, of the House Judiciary Engrossed bill, delete " If a person designated under a validly executed power of attorney by the person alleged to be in need of protection is not appointed as the guardian or conservator, the court must issue written findings of facts and conclusions of law as to why the designated person was not appointed." and insert " If a person alleged to be in need of protection has designated an individual to serve as guardian or conservator under a validly executed legal instrument, including a power of attorney, and the court does not appoint the designated individual, the court shall issue written findings of fact and conclusions of law as to why the designated individual was not appointed."
- On page 2, line 15, of the House Judiciary Engrossed bill, delete "A" and insert "In addition to any court-ordered evaluation, a"
- On page 2, line 15, of the House Judiciary Engrossed bill, delete "have" and insert "obtain"
- On page 2, line 16, of the House Judiciary Engrossed bill, delete "done by a physician, psychologist, or psychiatrist" and insert "at the person's own expense to be completed by a licensed healthcare professional"
- On page 2, line 16, of the House Judiciary Engrossed bill, after "choice" insert " in accordance with § 29A-5-306"
- On page 2, line 29, of the House Judiciary Engrossed bill, remove the overstrikes from "A report shall briefly state:"
- On page 2, line 30, of the House Judiciary Engrossed bill, remove the overstrikes from "(1) The current mental, physical and social condition of the protected person;"
- On page 2, line 31, of the House Judiciary Engrossed bill, remove the overstrikes from "(2) The living arrangements during the reporting period;"
- On page 2, line 32, of the House Judiciary Engrossed bill, remove the overstrikes from "(3) The medical, educational, vocational and other professional services provided to the protected person and the guardian's opinion as to the adequacy of the protected person's care;"
- On page 3, line 1, of the House Judiciary Engrossed bill, remove the overstrikes from "(4) A summary of the guardian's visits with and activities on the protected person's behalf;"
- On page 3, line 3, of the House Judiciary Engrossed bill, remove the overstrikes from "(5) If the protected person is institutionalized, whether the guardian agrees with the current treatment or habilitation plan;"
- On page 3, line 5, of the House Judiciary Engrossed bill, remove the overstrikes from "(6) A recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship;"
- On page 3, line 7, of the House Judiciary Engrossed bill, remove the overstrikes from "(7) Any other information requested by the court or useful in the opinion of the guardian;"
- On page 3, line 9, of the House Judiciary Engrossed bill, remove the overstrikes from "(8) The compensation requested and the reasonable and necessary expenses incurred by the guardian; and"
- On page 3, line 11, of the House Judiciary Engrossed bill, remove the overstrikes from "(9) The date on which the guardian completed the training curricula required pursuant to § 29A-5-119."
- On page 3, line 13, of the House Judiciary Engrossed bill, remove the overstrikes from "A guardian shall mail a copy of the report to the individuals and entities specified in § 29A-5-410 no later than fourteen days following its filing."
- On page 3, line 15, of the House Judiciary Engrossed bill, delete "Any" and insert "Within sixty days of the filing of the annual report, any"
- On page 3, line 15, of the House Judiciary Engrossed bill, remove the overstrikes from "Any interested person may request a hearing on the report. The court may order the guardian to

attend the hearing on the report on the court's own motion or on the petition of any interested person. A report of the guardian may be incorporated into and made a part of the accounting of the conservator"

On page 3, line 18, of the House Judiciary Engrossed bill, after "conservator" insert " if the same individual holds both appointments"

On page 3, line 18, of the House Judiciary Engrossed bill, remove the overstrikes from the period

On page 3, line 19, of the House Judiciary Engrossed bill, after "conservator." delete "Section 4. That chapter 29A-5 be amended with a NEW SECTION:"

On page 3, line 20, of the House Judiciary Engrossed bill, after "SECTION:" delete "A report shall briefly state:

- (1) The current mental, physical and social condition of the protected person;
- (2) The living arrangements during the reporting period;
- (3) The medical, educational, vocational, and other professional services provided to the protected person and the guardian's opinion as to the adequacy of the protected person's care;
- (4) A summary of the guardian's visits with and activities on the protected person's behalf;
- (5) A statement indicating whether or not the protected person has made any statements or indications to the guardian, or any other person who has informed the guardian, that the protected person does not want the guardianship to continue, or that the protected person wants a different guardian to be appointed;
- (6) If the protected person is institutionalized, whether the guardian agrees with the current treatment or habilitation plan;
- (7) A recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship;
- (8) Any other information requested by the court or useful in the opinion of the guardian;
- (9) The compensation requested and the reasonable and necessary expenses incurred by the guardian; and
- (10) The date on which the guardian completed the training curricula required pursuant to § 29A-5-119.

A guardian shall mail a copy of the report to the individuals and entities specified in § 29A-5-410 no later than fourteen days following its filing.

Within sixty days of the filing of the annual report, any interested person may request a hearing on the report. The court may order the guardian to attend the hearing on the report on the court's own motion or on the petition of any interested person. A report of the guardian may be incorporated into and made a part of the accounting of the conservator if the same individual holds both appointments.

If the report indicates that the protected person wants to have the guardianship ended, or wants to have another person to serve as the guardian, the court must determine if a hearing is necessary, based on the totality of the circumstances, including whether or not a hearing has previously been held on the same issue."

On page 4, line 31, of the House Judiciary Engrossed bill, remove the overstrikes from "An accounting shall include:"

On page 4, line 32, of the House Judiciary Engrossed bill, remove the overstrikes from "(1) A listing of the receipts, disbursements, and distributions from the estate under the conservator's control during the period covered by the account;"

On page 4, line 34, of the House Judiciary Engrossed bill, remove the overstrikes from "(2) A listing of the estate;"

On page 5, line 1, of the House Judiciary Engrossed bill, remove the overstrikes from "(3) The services being provided to the protected person;"

On page 5, line 2, of the House Judiciary Engrossed bill, remove the overstrikes from "(4) The significant actions taken by the conservator during the reporting period;"

On page 5, line 3, of the House Judiciary Engrossed bill, remove the overstrikes from "(5) A recommendation as to the continued need for conservatorship and any recommended changes in the scope of the conservatorship;"

On page 5, line 5, of the House Judiciary Engrossed bill, remove the overstrikes from "(6) Any other information requested by the court or useful in the opinion of the conservator;"

On page 5, line 7, of the House Judiciary Engrossed bill, remove the overstrikes from "(7) The compensation requested and the reasonable and necessary expenses incurred by the conservator;"

- On page 5, line 9, of the House Judiciary Engrossed bill, remove the overstrikes from "(8) An annual inventory of any item of tangible personal property with a value of two thousand five hundred dollars or more which has come into the conservator's possession or knowledge for the minor or protected person; and"
- On page 5, line 12, of the House Judiciary Engrossed bill, remove the overstrikes from "(9) The date on which the conservator completed the training curricula required pursuant to § 29A-5-119."
- On page 5, line 14, of the House Judiciary Engrossed bill, remove the overstrikes from "A conservator shall mail a copy of the accounting to the individuals and entities specified in § 29A-5-410 no later than fourteen days following its filing. A conservator shall notify all persons receiving the accounting that they must present written objections within fourteen"
- On page 5, line 17, of the House Judiciary Engrossed bill, delete "fourteen" and insert "sixty"
- On page 5, line 17, of the House Judiciary Engrossed bill, remove the overstrikes from " days after receipt or be barred from thereafter objecting."
- On page 5, line 18, of the House Judiciary Engrossed bill, remove the overstrikes from "Upon filing an objection, any interested person may request a hearing on the accounting. The court may order the conservator to attend the hearing on an account on the court's own motion or on the petition of any interested person. An accounting by a conservator may be incorporated into and made a part of the report of the guardian"
- On page 5, line 21, of the House Judiciary Engrossed bill, after "guardian" insert " if the same individual holds both appointments"
- On page 5, line 21, of the House Judiciary Engrossed bill, remove the overstrikes from the period
- On page 5, line 22, of the House Judiciary Engrossed bill, remove the overstrikes from "Subject to written objection, appeal, or vacation within the time permitted, an order allowing an account of a conservator adjudicates as to liabilities concerning all matters disclosed in the account."
- On page 5, line 25, of the House Judiciary Engrossed bill, after "account." delete "Section 6. That chapter 29A-5 be amended with a NEW SECTION:
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- On page 5, line 26, of the House Judiciary Engrossed bill, after "SECTION:" delete "An accounting shall include:
- (1) A listing of the receipts, disbursements, and distributions from the estate under the conservator's control during the period covered by the account;
 - (2) A listing of the estate;
 - (3) The services being provided to the protected person;
 - (4) The significant actions taken by the conservator during the reporting period;
 - (5) A statement indicating whether or not the protected person has made any statements or indications to the conservator, or any other person who has informed the conservator, that the protected person does not want the conservatorship to continue, or that the protected person wants a different conservator to be appointed;
 - (6) A recommendation as to the continued need for conservatorship and any recommended changes in the scope of the conservatorship;
 - (7) Any other information requested by the court or useful in the opinion of the conservator;
 - (8) The compensation requested and the reasonable and necessary expenses incurred by the conservator;
 - (9) An annual inventory of any item of tangible personal property with a value of two thousand five hundred dollars or more which has come into the conservator's possession or knowledge for the minor or protected person; and
 - (10) The date on which the conservator completed the training curricula required pursuant to § 29A-5-119.
- A conservator shall mail a copy of the accounting to the individuals and entities specified in § 29A-5-410 no later than fourteen days following its filing. A conservator shall notify all persons receiving the accounting that they must present written objections within sixty days after receipt or be barred from thereafter objecting.
- Upon filing an objection, any interested person may request a hearing on the accounting. The court may order the conservator to attend the hearing on an account on the court's own motion or on the petition of any interested person. An accounting by a conservator

may be incorporated into and made a part of the report of the guardian if the same individual holds both appointments.

Subject to written objection, appeal, or vacation within the time permitted, an order allowing an account of a conservator adjudicates as to liabilities concerning all matters disclosed in the account.

If the report indicates that the protected person wants to have conservatorship ended, or wants to have another person serve as the conservator, the court must determine if a hearing is necessary, based on the totality of the circumstances, including whether or not a hearing has previously been held on the same issue."

On page 6, line 31, of the House Judiciary Engrossed bill, delete "party" and insert "person"

On page 6, line 32, of the House Judiciary Engrossed bill, delete "and" and insert "or"

On page 6, line 32, of the House Judiciary Engrossed bill, delete "party" and insert "person"

On page 6, line 33, of the House Judiciary Engrossed bill, after "of " delete "an interested party or t"

On page 6, line 33, of the House Judiciary Engrossed bill, after "person" delete " and does not endanger the welfare or financial interest of the protected person"

On page 6, line 34, of the House Judiciary Engrossed bill, after "person." insert " If the court does not grant access, the court must issue written findings of fact and conclusions of law as to why the medical or financial records access was not granted."

On page 6, after line 34, of the House Judiciary Engrossed bill, insert: "

Section 6. That chapter 29A-5 be amended with a NEW SECTION:

If the court receives any verbal or written communication from a protected person alleging that a guardian or conservator is abusing or neglecting the protected person or is engaging in self-dealing with respect to the protected person's property, or the guardianship or conservatorship is no longer necessary and should be terminated, and the communication contains credible and substantial evidence, which in context of the entire record, supports the allegation, the court must treat the communication as a petition under § 29A-5-504."

Moved by: Rohl

Second by: Stalzer

Action: Prevailed by voice vote

MOTION: DO PASS HB 1240 AS AMENDED

Moved by: Wheeler

Second by: Stalzer

Action: Prevailed by Majority Members Elect (6-0-1-0)

Voting Yes: Hoffman, Mehlhaff, Rohl, Wheeler, Stalzer, and Duhamel

Excused: Diedrich

HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED HB 1240 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

MOTION: ADJOURN

Moved by: Rohl

Second by: Stalzer

Action: Prevailed by voice vote

Doug Mortenson, Committee Secretary

/s/ HELENE DUHAMEL

Helene Duhamel, Chair