

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

364E0500

SENATE BILL NO. 104

Introduced by: Senator Staggers and Representatives Kooistra, Begalka, Peterson (Bill),
and Van Gerpen

1 FOR AN ACT ENTITLED, An Act to provide that the spouse be appointed guardian in certain
2 circumstances.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 29A-5-304 be amended to read as follows:

5 29A-5-304. Any individual who has sufficient capacity to form a preference may at any time
6 nominate any individual or entity to act as his or her guardian or conservator. The nomination
7 may be made in writing, by an oral request to the court, or may be proved by any other
8 competent evidence. The court shall appoint the individual or entity so nominated if the nominee
9 is otherwise eligible to act and would serve in the best interests of the protected person.

10 In the absence of an effective nomination by the protected person, the court shall appoint as
11 guardian or conservator the individual or entity that will act in the protected person's best
12 interests. In making that appointment, the court shall consider the proposed guardian's or
13 conservator's geographic location, familial or other relationship with the protected person, ability
14 to carry out the powers and duties of the office, commitment to promoting the protected person's
15 welfare, any potential conflicts of interest, and the recommendations of the spouse, the parents,

1 or other interested relatives, whether made by will or otherwise. If the protected person has been
2 married at least three years, there is a presumption that the protected person's spouse shall be
3 appointed as guardian. The court may appoint more than one guardian or conservator and need
4 not appoint the same individual or entity to serve as both guardian and conservator.