

2021 South Dakota Legislature

House Bill 1261**AMENDMENT 1261B FOR THE INTRODUCED BILL**

1 **An Act to revise certain provisions related to the training curricula required of a**
2 **person appointed as a guardian or a conservator.**

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

4 **Section 1.** That § 29A-5-110 be AMENDED.

5 **29A-5-110. Appointment of individual or entity--Qualifications.**

6 Any adult individual may be appointed as a guardian, a conservator, or both, if
7 capable of providing an active and suitable program of guardianship or conservatorship
8 for the minor or protected person, and if not employed by any public or private agency,
9 entity, or facility that is providing substantial services or financial assistance to the minor
10 or protected person. The court may waive the prohibition on appointing an individual as
11 guardian or conservator because of the individual's employment if the court finds the
12 appointment is in the best interest of the minor or protected person.

13 Any public agency or nonprofit corporation may be appointed as a guardian, a
14 conservator, or both, if it is capable of providing an active and suitable program of
15 guardianship or conservatorship for the minor or protected person, and if it is not providing
16 substantial services or financial assistance to the minor or protected person.

17 Any bank or trust company authorized to exercise trust powers or to engage in trust
18 business in this state may be appointed as a conservator if it is capable of providing a
19 suitable program of conservatorship for the minor or protected person.

20 The Department of Human Services may be appointed as a guardian, a conservator,
21 or both, for individuals under its care or to whom it is providing services or financial
22 assistance, but such appointment may only be made if there is no individual, nonprofit
23 corporation, bank or trust company, or other public agency that is qualified and willing to
24 serve.

25 No individual or entity, other than a bank or trust company, whose only interest is that
26 of a creditor, is eligible for appointment as either a guardian or conservator.

1 No individual who has been convicted of a felony is eligible for appointment as a
2 guardian or conservator unless the court finds appointment of the person convicted of a
3 felony to be in the best interests of the person for whom the guardianship or
4 conservatorship is sought. As part of the best interest determination, the court shall
5 consider the nature of the offense, the date of offense, and the evidence of the proposed
6 guardian's or proposed conservator's rehabilitation.

7 A person, except for a financial institution or its officers, directors, employees, or
8 agents, or a trust company, who has been nominated for appointment as a guardian or
9 conservator, shall obtain an Interstate Identification Index criminal history record check
10 and a record check of South Dakota state court civil judgments for abuse, neglect, or
11 exploitation of an elder or adult with a disability. The nominee shall file the results of these
12 record checks with the court at least ten days prior to the appointment hearing date,
13 unless waived or modified by the court for good cause shown by affidavit filed
14 simultaneously with the petition for appointment.

15 The judge may not sign an order appointing a guardian or conservator until the record
16 check results have been filed with the court and reviewed by the judge, and a certificate
17 of completion of the training curricula required under § 29A-5-119 has been issued by the
18 State Bar of South Dakota for the person being appointed and filed with the court. The
19 record check results, or the lack thereof, shall be certified by affidavit. The court may not
20 require a record check or a certificate of completion of training required under § 29A-5-
21 119 upon the application of a petitioner for a temporary guardianship or temporary
22 conservatorship. The court may waive the record check or the certificate of completion of
23 training required under § 29A-5-119 for good cause shown.

24 **Section 2.** That § 29A-5-119 be AMENDED.

25 **29A-5-119. Training curricula for persons appointed as guardians and**
26 **conservators.**

27 The State Bar of South Dakota shall prepare and approve training curricula for
28 persons appointed as guardians and conservators. The training curricula shall include:

- 29 (1) The rights of minors and protected persons under this chapter and under the laws
30 of the United States generally;
- 31 (2) The duties and responsibilities of guardians and conservators;
- 32 (3) Reporting requirements;
- 33 (4) Least restrictive options in the areas of housing, medical care, and psychiatric care;
- 34 and

- 1 (5) Resources to assist guardians and conservators in fulfilling their duties.
2 Each person appointed by the court to be a guardian or conservator ~~must before July~~
3 ~~1, 2021 shall complete the training curricula within four months after the appointment as~~
4 ~~a guardian or conservator July 1, 2021.~~ A person may not be appointed by the court as a
5 guardian or conservator on or after July 1, 2021 until the person completes the training
6 curricula.

7 **Section 3.** That § 29A-5-403 be AMENDED.

8 **29A-5-403. Annual report of guardian of protected person.**

9 A guardian of a protected person shall file a report with the court within sixty days
10 following the first anniversary of the appointment and:

- 11 (1) At least annually thereafter;
12 (2) When the court orders additional reports to be filed;
13 (3) When the guardian resigns or is removed; and
14 (4) When the guardianship is terminated unless the court determines that there is then
15 no need therefor.

16 A guardian may elect to file a periodic report on a calendar-year basis. However, in no
17 event may such a report cover a period of more than one year. A calendar-year report
18 shall be filed with the court no later than April fifteenth of the succeeding year.

19 A report shall briefly state:

- 20 (1) The current mental, physical and social condition of the protected person;
21 (2) The living arrangements during the reporting period;
22 (3) The medical, educational, vocational and other professional services provided to the
23 protected person and the guardian's opinion as to the adequacy of the protected
24 person's care;
25 (4) A summary of the guardian's visits with and activities on the protected person's
26 behalf;
27 (5) If the protected person is institutionalized, whether the guardian agrees with the
28 current treatment or habilitation plan;
29 (6) A recommendation as to the need for continued guardianship and any
30 recommended changes in the scope of the guardianship;
31 (7) Any other information requested by the court or useful in the opinion of the
32 guardian; ~~and~~
33 (8) The compensation requested and the reasonable and necessary expenses incurred
34 by the guardian; and

1 (9) The date on which the guardian completed the training curricula required pursuant
2 to § 29A-5-119.

3 A guardian shall mail a copy of the report to the individuals and entities specified in
4 § 29A-5-410 no later than fourteen days following its filing.

5 Any interested person may request a hearing on the report. The court may order the
6 guardian to attend the hearing on the report on the court's own motion or on the petition
7 of any interested person. A report of the guardian may be incorporated into and made a
8 part of the accounting of the conservator.

9 **Section 4.** That § 29A-5-408 be AMENDED.

10 **29A-5-408. Annual accounting of conservator.**

11 A conservator shall file an accounting with the court within sixty days following the
12 first anniversary of the appointment and:

- 13 (1) At least annually thereafter;
14 (2) When the court orders additional accounts to be filed;
15 (3) When the conservator resigns or is removed; and
16 (4) When the conservatorship is terminated.

17 A conservator may elect to file a periodic accounting on a calendar-year basis.
18 However, in no event may such an accounting cover a period of more than one year. A
19 calendar-year report shall be filed with the court no later than April fifteenth of the
20 succeeding year.

21 An accounting shall include:

- 22 (1) A listing of the receipts, disbursements, and distributions from the estate under the
23 conservator's control during the period covered by the account;
24 (2) A listing of the estate;
25 (3) The services being provided to the protected person;
26 (4) The significant actions taken by the conservator during the reporting period;
27 (5) A recommendation as to the continued need for conservatorship and any
28 recommended changes in the scope of the conservatorship;
29 (6) Any other information requested by the court or useful in the opinion of the
30 conservator;
31 (7) The compensation requested and the reasonable and necessary expenses incurred
32 by the conservator;~~and~~

1 (8) An annual inventory of any item of tangible personal property with a value of two
2 thousand five hundred dollars or more which has come into the conservator's
3 possession or knowledge for the minor or protected person; and

4 (9) The date on which the conservator completed the training curricula required
5 pursuant to § 29A-5-119.

6 A conservator shall mail a copy of the accounting to the individuals and entities
7 specified in § 29A-5-410 no later than fourteen days following its filing. A conservator
8 shall notify all persons receiving the accounting that they must present written objections
9 within fourteen days after receipt or be barred from thereafter objecting.

10 Upon filing an objection, any interested person may request a hearing on the
11 accounting. The court may order the conservator to attend the hearing on an account on
12 the court's own motion or on the petition of any interested person. An accounting by a
13 conservator may be incorporated into and made a part of the report of the guardian.

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

17 **Section 5.** That § 29A-5-426 be AMENDED.

18 **29A-5-426. Proceedings for violation of court order or abuse of discretion by**
19 **guardian or conservator--Removal.**

20 If any person, including the protected person, reasonably believes that a guardian
21 or conservator has violated a court order or abused the guardian's or conservator's
22 discretion in applying § 29A-5-422, the person may move the court to:

- 23 (1) Require the guardian or conservator to grant a person access to the protected
24 person;
25 (2) Restrict, or further restrict, a person's access to the protected person;
26 (3) Modify the guardian or conservator's duties; or
27 (4) Remove the guardian or conservator pursuant to this chapter.

28 A guardian or conservator who knowingly isolates a protected person and has violated
29 §§ 29A-5-421 to 29A-5-426, inclusive, or an order issued pursuant to §§ 29A-5-421 to
30 29A-5-426, inclusive, is subject to removal pursuant to this chapter.

31 A person appointed to a guardian or conservator prior to July 1, 2021 who fails to
32 complete or timely complete the training curricula required pursuant to § 29A-5-119 is
33 subject to removal pursuant to this chapter.

1 **Section 6.** That § 29A-5-504 be AMENDED.

2 **29A-5-504. Petition to remove guardian or conservator--Reasons for**
3 **removal.**

4 Upon petition by any interested person or on the court's own motion, the court
5 may remove a guardian or conservator or order other appropriate relief if the guardian or
6 conservator:

- 7 (1) Is acting under letters secured by material misrepresentation or mistake, whether
8 fraudulent or innocent;
- 9 (2) Has an incapacity or illness, including substance abuse, which affects fitness for
10 office, or is adjudged to be a protected person in this or in any other jurisdiction;
- 11 (3) Is convicted of a crime which reflects on fitness for office;
- 12 (4) Wastes or mismanages the estate, unreasonably withholds distributions or makes
13 distributions in a negligent or profligate manner, or otherwise abuses powers or
14 fails to discharge duties;
- 15 (5) Neglects the care and custody of the minor, the protected person or legal
16 dependents;
- 17 (6) Has an interest adverse to the faithful performance of duties such that there is a
18 substantial risk that the guardian or conservator will fail to properly perform those
19 duties;
- 20 (7) Fails to file reports or accountings when required, or fails to comply with any order
21 of court;
- 22 (8) Acts in a manner that threatens the personal or financial security of a co-guardian
23 or co-conservator or endangers the surety on the bond;
- 24 (9) Fails to file sufficient bond after being ordered by the court to do so;
- 25 (10) Avoids service of process or notice;
- 26 (11) Becomes incapable of or unsuitable for the discharge of duties; ~~or~~
- 27 (12) Is not acting in the best interests of the minor or protected person or of the estate
28 even though without fault; or
- 29 (13) Fails to complete or timely complete the training curricula required pursuant to §
30 29A-5-119.