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BILL ANALYSIS



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Senate Bill 527 (as introduced 6-9-21)
Sponsor: Senator Jim Runestad
Committee: Judiciary and Public Safety

Date Completed: 6-10-21

CONTENT

The bill would amend the Estates and Protected Individuals Code to do the following:

- **Prescribe additional requirements for the appointment of a professional guardian or a professional conservator.**
- **Require a court to submit to the State Court Administrative Office (SCAO), by April 1 each year, a report containing certain information pertaining to professional guardians and professional conservators appointed in the preceding calendar year.**
- **Specify that a petition for an order appointing a successor guardian would be subject to the priority of appointment prescribed in the Code.**
- **Modify the order of priority a court must consider to appoint a person as guardian of a legally incapacitated individual.**
- **Require the court to appoint a person with priority guardian of a legally incapacitated individual estate unless specific findings on the record indicated that the person was not suitable or was not willing to serve, and prescribe the findings under which a person would be determined to be suitable to serve.**
- **Modify the order of priority a court must consider to appoint an individual, a corporation authorized to exercise fiduciary powers, or a professional conservator to serve as conservator of a protected individual's estate.**
- **Require the court to appoint a person with priority to serve as conservator of a protected individual's estate unless specific findings on the record indicated that the person was not suitable or was not willing to serve, and prescribe the findings under which a person would be determined to be suitable to serve.**

Professional Guardians & Conservators

Section 5106 of the Code allows the court to appoint or approve a professional guardian or professional conservator, as appropriate, as a guardian or conservator under the Code, or as a plenary guardian or partial guardian as those terms are defined in the Mental Health Code.

The court must appoint a professional guardian or professional conservator only if it finds on the record that the appointment of the professional guardian or professional conservator is in the ward's, developmentally disabled individual's, incapacitated individual's, or protected individual's best interests and that there is no other person who is competent, suitable, and willing to serve in that fiduciary capacity.

The court may not appoint a person as a professional guardian or professional conservator unless the professional guardian or professional conservator files a bond in an amount and with the conditions as determined by the court. Under the bill, in addition to the bond requirement, a person could not serve as a professional guardian or professional conservator, or both, for more than 12 wards or protected individuals.

Report to SCAO

Under the bill, by April 1 of each year, the court would have to submit a report to SCAO that included the following information:

- For each professional guardian appointed in the preceding calendar year, the professional guardian's name, the ward's name, the date of appointment, and the case number.
- For each professional conservator appointed in the preceding calendar year, the professional conservator's name, the protected individual's name, the date of appointment, and the case number.

Resignation or Removal of a Guardian

Section 5310 specifies that on petition of a guardian and subject to the filing and approval of a report prepared as required by Section 5314, the court must accept the guardian's resignation and make any other order that is appropriate. The ward or a person interested in the ward's welfare may petition for an order removing the guardian, appointing a successor guardian, modifying the guardianship's terms, or terminating the guardianship. A request for this order may be made by informal letter to the court or judge. A person who knowingly interferes with the transmission of this kind of request to the court or judge is subject to a finding of contempt of court.

Under the bill, a petition for an order appointing a successor guardian would be subject to the priority appointment under Section 5313.

Qualifications of a Guardian

Section 5313 allows a court to appoint a competent person as guardian of a legally incapacitated individual. The court may not appoint as a guardian an agency, public or private, that financially benefits from directly providing housing, medical, mental health, or social services to the individual. In appointing a guardian, the court must appoint a person if suitable and willing to serve, in a prescribed order of priority.

If there is no person chosen, nominated, or named, or if none of the people in the order of priority are suitable or willing to serve, the court may appoint as a guardian an individual who is related to the individual who is the subject of the petition in the following order of preference:

- The legally incapacitated individual's spouse, including a person nominated by will or other writing signed by a deceased spouse.
- An adult child of the individual.
- A parent of the individual, including a person nominated by will or other writing signed by a deceased parent.
- A relative of the individual with whom the individual has resided for more than 6 months before the filing of the petition.
- A person nominated by a person who is caring for the individual or paying benefits to the individual.

Instead, under the bill, if there were no person chosen, nominated, or named, or if none of the people in the order of priority were suitable or willing to serve, the court would have to appoint as a guardian an individual who was related to the individual who was the subject of the petition *or an individual who had an established relationship with the individual who was the subject of the petition, if suitable and willing to serve*, in the following order of preference:

- The legally incapacitated individual's spouse, including a person nominated by will or other writing signed by a deceased spouse.
- An adult child of the individual.
- A parent of the individual, including a person nominated by will or other writing signed by a deceased parent.
- A relative of the individual with whom the individual has resided for more than 6 months before the filing of the petition.
- A person nominated by a person who is caring for the individual or paying benefits to the individual.
- A person with an established relationship with the individual.

Under Section 5313, if none of the people as designated or listed in the order of priority are suitable or willing to serve, the court may appoint any competent person who is suitable and willing to serve, including a professional guardian.

The bill would require the court to appoint a person with priority guardian of a legally incapacitated individual unless specific findings on the record indicated that the person was not suitable as set forth in the bill or was not willing to serve. A person would be suitable to serve on a determination of specific findings of the court, including all of the following factors:

- The person's availability to the individual subject to the guardianship.
- The person's history and relationship with the individual subject to the guardianship.
- The person's criminal history that was relevant to the care, custody, and control of the individual subject to the guardianship.
- The person's financial history, including employment, training, skills, and stability, that would facilitate fulfillment of duties.
- The person's character.

In deciding between two people with equal priority, the court would have to hold a separate hearing within 28 days after the hearing on the issue of incapacity. In the separate hearing, the court would have to weigh the factors listed above with specific findings on the record.

Appointment of a Conservator

Section 5409 allows the court to appoint an individual, a corporation authorized to exercise fiduciary powers, or a professional conservator to serve as conservator of a protected individual's estate.

The following are entitled to consideration for appointment in the following order of priority:

- A conservator, guardian of property, or similar fiduciary appointed or recognized by the appropriate court of another jurisdiction in which the protected individual resides.
- An individual or corporation nominated by the protected individual if he or she is 14 years of age or older and of sufficient mental capacity to make an intelligent choice, including a nomination made in a durable power of attorney.
- The individual's spouse.
- An adult child of the individual.

- A parent of the individual or a person nominated by the will of a deceased parent.
- A relative of the individual with whom he or she has resided for more than six months before the petition is filed.
- A person nominated by the person who is caring for or paying benefits to the individual.
- If none of the people listed in the order of priority are suitable and willing to serve, any person that the court determines is suitable and willing to serve.

Instead, under the bill, the following would be entitled to consideration for appointment in the following order of priority:

- A conservator, guardian of property, or similar fiduciary appointed or recognized by the appropriate court of another jurisdiction in which the protected individual resided.
- An individual or corporation nominated by the protected individual if he or she were 14 years of age or older and of sufficient mental capacity to make an intelligent choice, including a nomination made in a durable power of attorney.
- The individual's spouse.
- An adult child of the individual.
- A parent of the individual or a person nominated by the will of a deceased parent.
- A relative of the individual with whom he or she had resided for more than six months before the petition was filed.
- A person nominated by the person who was caring for or paying benefits to the individual.
- A person with an established relationship with the protected individual.
- If none of the people listed in the order of priority were suitable and willing to serve, any person who the court determined was suitable and willing to serve.

Section 5409 allows a person in the order of priority to designate in writing a substitute to serve instead, and that designation transfers the priority to the substitute.

If people have equal priority, the court must select the person it considers best qualified to serve. Acting in the protected individual's best interest, the court may pass over a person having priority and appoint a person having a lower priority or no priority. The bill would delete these provisions.

The bill would require the court to appoint a person with priority to serve as conservator of a protected individual's estate unless specific findings on the record indicated the person was not suitable as set forth in the bill or was not willing to serve. A person would be suitable to serve on a determination of specific findings by the court, including all of the following factors:

- The person's availability to the individual subject to the conservatorship.
- The person's history and relationship with the individual subject to the conservatorship.
- The person's criminal history that was relevant to the role of a conservator.
- The person's financial history, including employment, training, skills, and stability, that will facilitate fulfillment of duties.
- The person's character.

In deciding between two people with equal priority, the court would have to hold a separate hearing within 28 days after the hearing under Section 5401 (which governs proceedings for the protection of property of an individual with a disability or of a minor). In the separate hearing, the court would have to weigh the factors listed above with specific findings on the record.

FISCAL IMPACT

The bill would have a minor negative impact on local courts. The bill would assign new procedures to local courts regarding guardian and conservator appointments and would require local courts to submit an annual report to the SCAO that included data on those appointments. These costs are expected to be minor and likely would be absorbed by local court systems.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.