

1 SB101
2 209132-1
3 By Senator Whatley
4 RFD: Judiciary
5 First Read: 02-FEB-21
6 PFD: 01/27/2021

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8 SYNOPSIS: Under existing law, if no fit person applies
9 or qualifies to serve as a guardian or conservator
10 of the estate of a protected person, the sheriff
11 must be appointed to act as conservator or guardian
12 of that person.

13 This bill would eliminate provisions
14 providing that the sheriff, or any employee of the
15 sheriff's office, be appointed as a general
16 guardian or conservator of the estate of a
17 protected person and would repeal existing law that
18 requires a sheriff to be so appointed.

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20 A BILL
21 TO BE ENTITLED
22 AN ACT

23
24 Relating to sheriffs; to amend Sections 26-2-50 and
25 26-2A-138, Code of Alabama 1975, to prevent certain persons
26 from being appointed as guardians or conservators; and to
27 repeal Section 26-2-27, Code of Alabama 1975.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 26-2-50 and 26-2A-138, Code of
3 Alabama 1975, are amended to read as follows:

4 "§26-2-50.

5 "The general guardian or conservator ~~of~~ for the
6 county must be appointed conservator of an incapacitated
7 person if no other suitable person applies for appointment and
8 qualifies ~~and if there be no general conservator, the sheriff~~
9 ~~must be appointed.~~

10 "§26-2A-138.

11 "(a) The court may appoint an individual or a
12 corporation with general power to serve as trustee or
13 conservator of the estate of a protected person. The following
14 are entitled to consideration for appointment in the order
15 listed:

16 "(1) A conservator, guardian of property, or other
17 like fiduciary appointed or recognized by an appropriate court
18 of any other jurisdiction in which the protected person
19 resides;.

20 "(2) An individual or corporation nominated by the
21 protected person who is 14 or more years of age and of
22 sufficient mental capacity to make an intelligent choice;.

23 "(3) An attorney-in-fact under a valid durable power
24 of attorney previously executed by the protected person and
25 giving the attorney-in-fact reasonably broad powers over the
26 property of the protected person;.

1 "(4) The spouse of the protected person, or a person
2 nominated by the will of a deceased spouse to whom the
3 protected person was married at the decedent's death and the
4 protected person has not remarried~~7~~.

5 "(5) An adult child of the protected person~~7~~.

6 "(6) A parent of the protected person, or a person
7 nominated by the will of a deceased parent~~7~~.

8 "(7) Any relative of the protected person who has
9 resided with the protected person for more than six months
10 before the filing of the petition~~7~~.

11 "(8) A person nominated by one who is caring for or
12 paying benefits to the protected person~~7~~ and.

13 "(9) A general guardian or ~~sheriff~~ conservator for
14 the county who must be appointed and act as conservator when
15 no other fit person applies for appointment and qualifies. In
16 no event shall the general guardian or conservator appointed
17 under this subdivision be the county sheriff, a deputy
18 sheriff, or any employee of the sheriff's office.

19 "(b) A person in priorities (1), (4), (5), (6), or
20 (7) may designate in writing a substitute to serve instead and
21 thereby transfer the priority to the substitute. With respect
22 to persons having equal priority, the court shall select the
23 one it deems best suited to serve. The court, acting in the
24 best interest of the protected person, may pass over a person
25 having priority and appoint a person having a lower priority
26 or no priority."

1 Section 2. Section 26-2-27, Code of Alabama 1975,
2 relating to the appointment of the sheriff as a guardian for a
3 minor, is repealed.

4 Section 3. This act shall become effective on the
5 first day of the third month following its passage and
6 approval by the Governor, or its otherwise becoming law.