

1 SB163
2 209132-2
3 By Senator Whatley
4 RFD: Judiciary
5 First Read: 02-FEB-21

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

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

A BILL
TO BE ENTITLED
AN ACT

Relating to sheriffs; to amend Sections 26-2-50 and 26-2A-138, Code of Alabama 1975, to prevent certain persons from being appointed as guardians or conservators; and to 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 unless the
19 county sheriff consents to the appointment.

20 "(b) A person in priorities (1), (4), (5), (6), or
21 (7) may designate in writing a substitute to serve instead and
22 thereby transfer the priority to the substitute. With respect
23 to persons having equal priority, the court shall select the
24 one it deems best suited to serve. The court, acting in the
25 best interest of the protected person, may pass over a person
26 having priority and appoint a person having a lower priority
27 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.