

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1220

Introduced by Bosn, 25; DeBoer, 10.

Read first time January 16, 2024

Committee:

1 A BILL FOR AN ACT relating to property; to amend sections 30-2446,
2 30-2603, 30-2637, 30-3816, 30-3828, 30-4002, and 43-2707, Reissue
3 Revised Statutes of Nebraska, and sections 30-24,129 and 30-3402,
4 Revised Statutes Cumulative Supplement, 2022; to change requirements
5 relating to bonds for personal representatives and small estate
6 affidavits; to change provisions relating to certain payments and
7 transfers to minors; to permit a protected person to retain an
8 attorney as prescribed; to change a requirement relating to
9 cotrustees; to change provisions relating to health care powers of
10 attorney, the Nebraska Uniform Trust Code, and the Nebraska Uniform
11 Power of Attorney Act; and to repeal the original sections.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-2446, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 30-2446 (1) A bond shall be required of a personal representative
4 unless: (a) The will expressly waives the bond, expressly requests that
5 there be no bond, or waives the requirement of a surety thereon other
6 than the personal representative; (b) all of the heirs, if no will has
7 been probated, or all of the devisees under a will which does not provide
8 for relieving the personal representative of bond in accordance with
9 subdivision (1)(a) of this section, file with the court a written waiver
10 of the bond requirement; (c) a duly appointed guardian or conservator
11 waives bond ~~may waive~~ on behalf of a ~~his~~ ward or protected person unless
12 the guardian or conservator is the personal representative; (d) a person
13 eighteen years of age or older waives bond on the person's own behalf;
14 (e) ~~(e)~~ the personal representative is a national banking association, a
15 holder of a banking permit under the laws of this state, or a trust
16 company holding a certificate to engage in trust business from the
17 Department of Banking and Finance; or (f) ~~(d)~~ the petition for formal or
18 informal appointment alleges that the probable value of the entire estate
19 will permit summary procedures under section 30-24,127.

20 (2) In any case when bond is not required under subsection (1) of
21 this section, the court may, upon petition of any interested person and
22 upon reasonable proof that the interest of the petitioning person is in
23 danger of being lost because of the administration of the estate, require
24 a bond in such amount as the court may direct in order to protect the
25 interest of the petitioner or of the petitioner and others. An heir or
26 devisee who initially waived bond may be a petitioner under this
27 subsection.

28 (3) If a bond is not initially required because the petition for
29 appointment alleges that the probable value of the entire estate will
30 permit summary procedures under section 30-24,127, and it later appears
31 from the inventory and appraisal that the value of the estate will not

1 permit use of such procedures, then the personal representative shall
2 promptly file a bond unless one is not required for some other reason
3 under subsection (1) of this section.

4 Sec. 2. Section 30-24,129, Revised Statutes Cumulative Supplement,
5 2022, is amended to read:

6 30-24,129 (a) Thirty days after the death of a decedent, any person
7 claiming as successor to the decedent's interest in real property in this
8 state may file or cause to be filed on his or her behalf, with the
9 register of deeds office of a county in which the real property of the
10 decedent that is the subject of the affidavit is located, an affidavit
11 describing the real property owned by the decedent and the interest of
12 the decedent in the property. The affidavit shall be signed by all
13 persons claiming as successors or by parties legally acting on their
14 behalf and shall be prima facie evidence of the facts stated in the
15 affidavit. The affidavit shall state:

16 (1) the value of the decedent's interest in all real property in the
17 decedent's estate located in this state does not exceed one hundred fifty
18 thousand dollars. The value of the decedent's interest shall be
19 determined from the value of the property shown on the assessment rolls
20 for the year in which the decedent died less real estate taxes and
21 interest thereon if any is due at the time of death;

22 (2) thirty days have elapsed since the death of the decedent as
23 shown in a certified or authenticated copy of the decedent's death
24 certificate attached to the affidavit;

25 (3) no application or petition for the appointment of a personal
26 representative is pending or has been granted in the State of Nebraska;

27 (4) the claiming successor is entitled to the real property either
28 by reason of the homestead allowance, exempt property allowance, or
29 family allowance, by intestate succession, or by devise under the will of
30 the decedent. If claiming by devise under the will of the decedent, a
31 copy of such will shall be attached to the affidavit;

1 (5) the claiming successor has made an investigation and has been
2 unable to determine any subsequent will;

3 (6) no other person has a right to the interest of the decedent in
4 the described property;

5 (7) the claiming successor's relationship to the decedent and the
6 value of the entire estate of the decedent subject to probate; and

7 (8) the person or persons claiming as successors under the affidavit
8 swear or affirm that all statements in the affidavit are true and
9 material and further acknowledge that any false statement may subject the
10 person or persons to penalties relating to perjury under section 28-915.

11 (b) The recorded affidavit and certified or authenticated copy of
12 the decedent's death certificate shall also be recorded by the claiming
13 successor in any other county in this state in which the real property of
14 the decedent that is the subject of the affidavit is located.

15 Sec. 3. Section 30-2603, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 30-2603 Any person under a duty to pay or deliver money or personal
18 property to a minor may perform this duty, in amounts not exceeding forty
19 ~~twenty-five~~ thousand dollars per annum, by paying or delivering the money
20 or property to:

21 (1) The minor, if he or she has attained the age of eighteen years
22 or is married;

23 (2) Any person having the care and custody of the minor with whom
24 the minor resides;

25 (3) A guardian of the minor; or

26 (4) A financial institution incident to a deposit in a federally
27 insured savings account in the sole name of the minor and giving notice
28 of the deposit to the minor.

29 This section does not apply if the person making payment or delivery
30 has actual knowledge that a conservator has been appointed or proceedings
31 for appointment of a conservator of the estate of the minor are pending.

1 The persons, other than the minor or any financial institution under
2 subdivision (4) of this section, receiving money or property for a minor
3 are obligated to apply the money to the support and education of the
4 minor but may not pay themselves except by way of reimbursement for out-
5 of-pocket expenses for goods and services necessary for the minor's
6 support. Any excess sums shall be preserved for future support of the
7 minor, and any balance not so used and any property received for the
8 minor must be turned over to the minor when he or she attains majority.
9 Persons who pay or deliver in accordance with provisions of this section
10 are not responsible for the proper application thereof.

11 Sec. 4. Section 30-2637, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 30-2637 The court has the following powers which may be exercised
14 directly or through a conservator with respect to the estate and affairs
15 of protected persons:

16 (1) While a petition for appointment of a conservator or other
17 protective order is pending and after preliminary hearing and without
18 notice to others, the court has power to preserve and apply the property
19 of the person to be protected as may be required for his or her benefit
20 or the benefit of his or her dependents.

21 (2) After hearing and upon determining that a basis for an
22 appointment or other protective order exists with respect to a minor
23 without other disability, the court has all those powers over the estate
24 and affairs of the minor which are or might be necessary for the best
25 interests of the minor, the minor's family, and members of the minor's
26 household.

27 (3) After hearing and upon determining by clear and convincing
28 evidence that a basis for an appointment or other protective order exists
29 with respect to a person for reasons other than minority, the court has,
30 for the benefit of the person and members of his or her household, all
31 the powers over his or her estate and affairs which he or she could

1 exercise if present and not under disability except the power to make a
2 will. These powers include, but are not limited to, power to make gifts,
3 to convey or release his or her contingent and expectant interests in
4 property including marital property rights and any right of survivorship
5 incident to joint tenancy or tenancy by the entirety, to exercise or
6 release his or her powers as trustee, personal representative, custodian
7 for minors, conservator, or donee of a power of appointment, to enter
8 into contracts, to create revocable or irrevocable trusts of property of
9 the estate which may extend beyond his or her disability or life, to
10 exercise or release his or her powers as settlor of a revocable trust as
11 provided in subsection (f) of section 30-3854, to exercise options of the
12 disabled person to purchase securities or other property, to exercise his
13 or her rights to elect options and change beneficiaries under insurance
14 and annuity policies and to surrender the policies for their cash value,
15 to exercise his or her right to an elective share in the estate of his or
16 her deceased spouse, and to renounce any interest by testate or intestate
17 succession or by inter vivos transfer.

18 (4) The court may exercise or direct the exercise of its authority
19 to exercise or release powers of appointment of which the protected
20 person is donee, to renounce interests, to make gifts in trust or
21 otherwise exceeding twenty percent of any year's income of the estate, or
22 to change beneficiaries under insurance and annuity policies, only if
23 satisfied, after notice and hearing, that it is in the best interests of
24 the protected person, and that he or she either is incapable of
25 consenting or has consented to the proposed exercise of power.

26 (5) An order made pursuant to this section determining by clear and
27 convincing evidence that a basis for appointment of a conservator or
28 other protective order exists has no effect on the capacity of the
29 protected person to make a will.

30 (6) After appointment, the protected person may retain an attorney
31 for the sole purpose of challenging the conservatorship, the terms of the

1 conservatorship, or the actions of the conservator on behalf of the
2 protected person.

3 Sec. 5. Section 30-3402, Revised Statutes Cumulative Supplement,
4 2022, is amended to read:

5 30-3402 For purposes of sections 30-3401 to 30-3432:

6 (1) Adult shall mean any person who is eighteen ~~nineteen~~ years of
7 age or older or ~~who is not a minor or has been married;~~

8 (2) Attending physician shall mean the physician, selected by or
9 assigned to a principal, who has primary responsibility for the care and
10 treatment of such principal;

11 (3) Attorney in fact shall mean an adult properly designated and
12 authorized under sections 30-3401 to 30-3432 to make health care
13 decisions for a principal pursuant to a power of attorney for health care
14 and shall include a successor attorney in fact;

15 (4) Health care shall mean any treatment, procedure, or intervention
16 to diagnose, cure, care for, or treat the effects of disease, injury, and
17 degenerative conditions. Health care shall include mental health care;

18 (5) Health care decision shall include consent, refusal of consent,
19 or withdrawal of consent to health care. Health care decision shall not
20 include (a) the withdrawal or withholding of routine care necessary to
21 maintain patient comfort, (b) the withdrawal or withholding of the usual
22 and typical provision of nutrition and hydration, or (c) the withdrawal
23 or withholding of life-sustaining procedures or of artificially
24 administered nutrition or hydration, except as provided by sections
25 30-3401 to 30-3432;

26 (6) Health care provider shall mean an individual or facility
27 licensed, certified, or otherwise authorized or permitted by law to
28 administer health care in the ordinary course of business or professional
29 practice and shall include all facilities defined in the Health Care
30 Facility Licensure Act;

31 (7) Except as otherwise provided in section 30-4404 for an advance

1 mental health care directive, incapable shall mean the inability to
2 understand and appreciate the nature and consequences of health care
3 decisions, including the benefits of, risks of, and alternatives to any
4 proposed health care or the inability to communicate in any manner an
5 informed health care decision;

6 (8) Life-sustaining procedure shall mean any medical procedure,
7 treatment, or intervention that (a) uses mechanical or other artificial
8 means to sustain, restore, or supplant a spontaneous vital function and
9 (b) when applied to a person suffering from a terminal condition or who
10 is in a persistent vegetative state, serves only to prolong the dying
11 process. Life-sustaining procedure shall not include routine care
12 necessary to maintain patient comfort or the usual and typical provision
13 of nutrition and hydration;

14 (9) Mental health care shall include, but not be limited to, mental
15 health care and treatment expressly provided for in the Advance Mental
16 Health Care Directives Act;

17 (10) Persistent vegetative state shall mean a medical condition
18 that, to a reasonable degree of medical certainty as determined in
19 accordance with currently accepted medical standards, is characterized by
20 a total and irreversible loss of consciousness and capacity for cognitive
21 interaction with the environment and no reasonable hope of improvement;

22 (11) Power of attorney for health care shall mean a power of
23 attorney executed in accordance with sections 30-3401 to 30-3432 which
24 authorizes a designated attorney in fact to make health care decisions
25 for the principal when the principal is incapable;

26 (12) Principal shall mean an adult who, when competent, confers upon
27 another adult a power of attorney for health care;

28 (13) Reasonably available shall mean that a person can be contacted
29 with reasonable efforts by an attending physician or another person
30 acting on behalf of the attending physician;

31 (14) Terminal condition shall mean an incurable and irreversible

1 medical condition caused by injury, disease, or physical illness which,
2 to a reasonable degree of medical certainty, will result in death
3 regardless of the continued application of medical treatment including
4 life-sustaining procedures; and

5 (15) Usual and typical provision of nutrition and hydration shall
6 mean delivery of food and fluids orally, including by cup, eating
7 utensil, bottle, or drinking straw.

8 Sec. 6. Section 30-3816, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 30-3816 (1) The trustee of a trust having its principal place of
11 administration in this state may register the trust in the county court
12 of this state at the principal place of administration. Unless otherwise
13 designated in the trust instrument, the principal place of administration
14 of a trust is the trustee's usual place of business where the records
15 pertaining to the trust are kept, or at the trustee's residence if he or
16 she has no such place of business.

17 (2) In the case of cotrustees, the principal place of
18 administration, if not otherwise designated in the trust instrument, is
19 (a) ~~(1)~~ the usual place of business of the corporate trustee if there is
20 ~~but~~ one corporate cotrustee, (b) ~~or~~ ~~(2)~~ the usual place of business or
21 residence of the individual trustee who is a professional fiduciary if
22 there is ~~but~~ one such person and no corporate cotrustee, and (c)
23 ~~otherwise~~ ~~(3)~~ the usual place of business or residence of any of the
24 cotrustees as agreed upon by such cotrustees ~~them~~.

25 (3) If there is more than one trustee, any trustee may register the
26 trust in the county in which the principal place of administration is
27 located under subsection (2). If the principal place of administration is
28 determined under subdivision (2)(c) and the cotrustees cannot agree on
29 the principal place of administration, a proceeding may be filed under
30 section 30-3812 by any interested person to determine the principal place
31 of administration.

1 (4) The right to register under sections 30-3816 to 30-3820 does not
2 apply to the trustee of a trust if registration would be inconsistent
3 with the retained jurisdiction of a foreign court from which the trustee
4 cannot obtain release.

5 (5) No one other than a trustee shall register a trust. Registration
6 of a trust is not required in order for a court to exercise jurisdiction
7 over a trust, a trustee, or the beneficiaries.

8 Sec. 7. Section 30-3828, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 30-3828 (UTC 402) (a) A trust is created only if:

11 (1) the settlor has capacity to create a trust and meets one of the
12 following requirements: ÷

13 (A) the settlor is eighteen years of age or older; or

14 (B) the settlor is not a minor;

15 (2) the settlor indicates an intention to create the trust;

16 (3) the trust has a definite beneficiary or is:

17 (A) a charitable trust;

18 (B) a trust for the care of an animal, as provided in section
19 30-3834; or

20 (C) a trust for a noncharitable purpose, as provided in section
21 30-3835;

22 (4) the trustee has duties to perform; and

23 (5) the same person is not the sole trustee and sole beneficiary.

24 (b) A beneficiary is definite if the beneficiary can be ascertained
25 now or in the future, subject to any applicable rule against
26 perpetuities.

27 (c) A power in a trustee to select a beneficiary from an indefinite
28 class is valid. If the power is not exercised within a reasonable time,
29 the power fails and the property subject to the power passes to the
30 persons who would have taken the property had the power not been
31 conferred.

1 Sec. 8. Section 30-4002, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 30-4002 For purposes of the Nebraska Uniform Power of Attorney Act:

4 (1) Agent means a person granted authority to act for a principal
5 under a power of attorney, whether denominated an agent, attorney in
6 fact, or otherwise. The term includes an original agent, coagent,
7 successor agent, and a person to which an agent's authority is delegated;

8 (2) Business day means any day other than a Saturday, Sunday, or
9 state or nationally observed legal holiday;

10 (3) Durable, with respect to a power of attorney, means not
11 terminated by the principal's incapacity;

12 (4) Electronic means relating to technology having electrical,
13 digital, magnetic, wireless, optical, electromagnetic, or similar
14 capabilities;

15 (5) Good faith means honesty in fact;

16 (6) Incapacity means inability of an individual to manage property
17 or property affairs effectively because the individual:

18 (a) Has an impairment in the ability to receive and evaluate
19 information or make or communicate responsible decisions even with the
20 use of technological assistance for reasons such as mental illness,
21 mental deficiency, physical illness or disability, chronic use of drugs,
22 chronic intoxication, or lack of discretion in managing benefits received
23 from public funds; or

24 (b) Is:

25 (i) Missing;

26 (ii) Detained, including incarcerated in a penal system; or

27 (iii) Outside the United States and unable to return;

28 (7) Person means an individual, corporation, business trust, estate,
29 trust, partnership, limited liability company, association, joint
30 venture, public corporation, government or governmental subdivision,
31 agency, or instrumentality, or any other legal or commercial entity;

1 (8) Power of attorney means a writing or other record that grants
2 authority to an agent to act in the place of the principal, whether or
3 not the term power of attorney is used;

4 (9) Presently exercisable general power of appointment, with respect
5 to property or a property interest subject to a power of appointment,
6 means power exercisable at the time in question to vest absolute
7 ownership in the principal individually, the principal's estate, the
8 principal's creditors, or the creditors of the principal's estate. The
9 term includes a power of appointment not exercisable until the occurrence
10 of a specified event, the satisfaction of an ascertainable standard, or
11 the passage of a specified period only after the occurrence of the
12 specified event, the satisfaction of the ascertainable standard, or the
13 passage of the specified period. The term does not include a power
14 exercisable in a fiduciary capacity or only by will;

15 (10) Principal means an individual, who is eighteen years of age or
16 older or is not a minor, who grants authority to an agent in a power of
17 attorney;

18 (11) Property means anything that may be the subject of ownership,
19 whether real or personal, legal or equitable, or any interest or right
20 therein;

21 (12) Record means information that is inscribed on a tangible medium
22 or that is stored in an electronic or other medium and is retrievable in
23 perceivable form;

24 (13) Sign means, with present intent to authenticate or adopt a
25 record:

26 (a) To execute or adopt a tangible symbol; or

27 (b) To attach to or logically associate with the record an
28 electronic sound, symbol, or process;

29 (14) State means a state of the United States, the District of
30 Columbia, Puerto Rico, the United States Virgin Islands, or any territory
31 or insular possession subject to the jurisdiction of the United States;

1 and

2 (15) Stocks and bonds means stocks, bonds, mutual funds, and all
3 other types of securities and financial instruments, whether held
4 directly, indirectly, or in any other manner. The term does not include
5 commodity futures contracts and call or put options on stocks or stock
6 indexes.

7 Sec. 9. Section 43-2707, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 43-2707 (1) Subject to subsection (3) of this section, a personal
10 representative or trustee may make an irrevocable transfer to another
11 adult or trust company as custodian for the benefit of a minor pursuant
12 to section 43-2710, in the absence of a will or under a will or trust
13 that does not contain an authorization to do so.

14 (2) Subject to subsection (3) of this section, a conservator may
15 make an irrevocable transfer to another adult or trust company as
16 custodian for the benefit of the minor pursuant to section 43-2710.

17 (3) A transfer under subsection (1) or (2) of this section may be
18 made only if (a) the personal representative, trustee, or conservator
19 considers the transfer to be in the best interest of the minor, (b) the
20 transfer is not prohibited by or inconsistent with provisions of the
21 applicable will, trust agreement, or other governing instrument, and (c)
22 the transfer is authorized by the court if it exceeds forty ten thousand
23 dollars in value.

24 Sec. 10. Original sections 30-2446, 30-2603, 30-2637, 30-3816,
25 30-3828, 30-4002, and 43-2707, Reissue Revised Statutes of Nebraska, and
26 sections 30-24,129 and 30-3402, Revised Statutes Cumulative Supplement,
27 2022, are repealed.