

# LEGISLATIVE BILL 1195

Approved by the Governor April 15, 2024

Introduced by Conrad, 46.

A BILL FOR AN ACT relating to law; to amend sections 25-3003, 25-3004, 30-2446, 30-2603, 30-3816, 30-3828, 30-4002, 40-101, 40-103, 43-2707, 71-5905, and 84-168, Reissue Revised Statutes of Nebraska, and sections 30-24,129 and 30-3402, Revised Statutes Cumulative Supplement, 2022; to change provisions relating to grants for service providers by the Commission on Public Advocacy; to change provisions of the Nebraska Probate Code relating to bonds, small estate affidavits, and certain payments and transfers to minors; to redefine adult for purposes of health care powers of attorney; to change provisions of the Nebraska Uniform Trust Code relating to registration of trusts and the requirements to be a settlor; to change the definition of principal under the Nebraska Uniform Power of Attorney Act; to change and eliminate provisions relating to homestead exemptions for judgment liens and executions; to change provisions relating to irrevocable transfers under the Nebraska Uniform Transfers to Minors Act; to provide restrictions and requirements relating to third-party guarantees of payment under the Assisted-Living Facility Act; to authorize acceptance of cession or retrocession of federal jurisdiction for juvenile matters; to change provisions and provide duties relating to such acceptance and to authorize certain agreements; to harmonize provisions; to repeal the original sections; and to outright repeal section 40-102, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 25-3003, Reissue Revised Statutes of Nebraska, is amended to read:

25-3003 (1) The Commission on Public Advocacy shall establish eligibility criteria and guidelines to determine on an annual basis (a) the service areas, (b) the legal services to be provided and the priorities for providing the services, which shall be determined in accordance with subsection (1) of section 25-3004, and (c) the service provider or providers for each service area. The commission shall annually certify one or more service providers for each service area. A single service provider may be certified for more than one service area. Such certification entitles the service provider to a distribution of funds as defined and determined by section 25-3004.

(2) The commission shall accept applications for certification on an annual basis from entities interested in providing free civil legal services to eligible low-income persons. In the application, each applicant shall certify to the commission that the applicant intends to provide free civil legal services to eligible low-income persons as determined by the commission.

Sec. 2. Section 25-3004, Reissue Revised Statutes of Nebraska, is amended to read:

25-3004 (1) Each service provider certified by the Commission on Public Advocacy shall be eligible to receive funds from the Legal Aid and Services Fund to provide free civil legal services to eligible low-income persons in the service area for which it is certified. The funds granted to each service provider from the Legal Aid and Services Fund shall be determined by the commission. Grants shall be awarded to legal service providers that provide direct legal representation of eligible low-income persons.

(2) Each service provider is authorized to use funds received from the Legal Aid and Services Fund to provide legal services in civil matters to any eligible low-income person.

(3) A service provider which has received funds from the Legal Aid and Services Fund shall be audited annually. For any service provider receiving funds pursuant to subsection (1) of this section, such audit shall include confirmation of the direct legal representation described in subsection (1) of this section, as shown through an entry of appearance as attorney in a court action, an execution of a retainer agreement, or any similar confirmation of actual legal representation.

Sec. 3. Section 30-2446, Reissue Revised Statutes of Nebraska, is amended to read:

30-2446 (1) A bond shall be required of a personal representative unless: (a) The will expressly waives the bond, expressly requests that there be no bond, or waives the requirement of a surety thereon other than the personal representative; (b) all of the heirs, if no will has been probated, or all of the devisees under a will which does not provide for relieving the personal representative of bond in accordance with subdivision (1)(a) of this section, file with the court a written waiver of the bond requirement; (c) a duly appointed guardian or conservator waives bond ~~may waive~~ on behalf of a his ward or protected person unless the guardian or conservator is the personal representative; (d) a person eighteen years of age or older waives bond on the person's own behalf; ~~(e)~~ (e) the personal representative is a national banking association, a holder of a banking permit under the laws of this state, or a trust company holding a certificate to engage in trust business from the

Department of Banking and Finance; or (f) ~~(d)~~ the petition for formal or informal appointment alleges that the probable value of the entire estate will permit summary procedures under section 30-24,127.

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

(3) If a bond is not initially required because the petition for appointment alleges that the probable value of the entire estate will permit summary procedures under section 30-24,127, and it later appears from the inventory and appraisal that the value of the estate will not permit use of such procedures, then the personal representative shall promptly file a bond unless one is not required for some other reason under subsection (1) of this section.

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

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

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

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

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

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

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

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

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

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

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

Sec. 5. Section 30-2603, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

(3) A guardian of the minor; or

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

This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. The persons, other than the minor or any financial institution under subdivision (4) of this section, receiving money or property for a minor are obligated to apply the money to the support and education of the minor but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor, and any balance not so used and any property received for the minor must be turned over to the minor when he or she attains majority. Persons who pay or deliver in accordance with provisions of

this section are not responsible for the proper application thereof.

Sec. 6. Section 30-3402, Revised Statutes Cumulative Supplement, 2022, is amended to read:

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

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

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

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

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

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

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

(7) Except as otherwise provided in section 30-4404 for an advance mental health care directive, incapable shall mean the inability to understand and appreciate the nature and consequences of health care decisions, including the benefits of, risks of, and alternatives to any proposed health care or the inability to communicate in any manner an informed health care decision;

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

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

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

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

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

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

(14) Terminal condition shall mean an incurable and irreversible medical condition caused by injury, disease, or physical illness which, to a reasonable degree of medical certainty, will result in death regardless of the continued application of medical treatment including life-sustaining procedures; and

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

Sec. 7. Section 30-3816, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

interested person to determine the principal place of administration.

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

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

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

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

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

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

(B) the settlor is not a minor;

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

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

(A) a charitable trust;

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

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

(4) the trustee has duties to perform; and

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

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

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

Sec. 9. Section 30-4002, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

(5) Good faith means honesty in fact;

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

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

(b) Is:

(i) Missing;

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

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

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

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

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

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

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

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

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

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

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

(14) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular

possession subject to the jurisdiction of the United States; and

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

Sec. 10. Section 40-101, Reissue Revised Statutes of Nebraska, is amended to read:

40-101 Each natural person residing in this state shall have exempt from judgment liens and from execution or forced sale, except as provided in sections 40-101 to 40-116, a A homestead not exceeding one hundred twenty six thousand dollars in value consisting shall consist of the dwelling house in which the claimant resides, its appurtenances, and the land on which the same is situated, not exceeding one hundred and sixty acres of land, to be selected by the owner, and not in any incorporated city or village, or, at the option of the claimant, a quantity of contiguous land not exceeding two lots within any incorporated city or village, ~~and shall be exempt from judgment liens and from execution or forced sale, except as provided in sections 40-101 to 40-116.~~

Sec. 11. Section 40-103, Reissue Revised Statutes of Nebraska, is amended to read:

40-103 The homestead is subject to execution or forced sale in satisfaction of judgments obtained (1) on debts secured by mechanics', laborers', or vendors' liens upon the premises and (2) on debts secured by mortgages or trust deeds upon the premises executed and acknowledged by a ~~both husband and wife, or an unmarried~~ claimant.

Sec. 12. Section 43-2707, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

Sec. 13. Section 71-5905, Reissue Revised Statutes of Nebraska, is amended to read:

71-5905 (1) An assisted-living facility shall determine if an applicant for admission to the assisted-living facility is admitted or if a resident of the assisted-living facility is retained based on the care needs of the applicant or resident, the ability to meet those care needs within the assisted-living facility, and the degree to which the admission or retention of the applicant or resident poses a danger to the applicant or resident or others.

(2) Any complex nursing intervention or noncomplex intervention provided by an employee of the assisted-living facility shall be performed in accordance with applicable state law.

(3) Each assisted-living facility shall provide written information about the practices of the assisted-living facility to each applicant for admission to the facility or his or her authorized representative. The information shall include:

(a) A description of the services provided by the assisted-living facility and the staff available to provide the services;

(b) The charges for services provided by the assisted-living facility;

(c) Whether or not the assisted-living facility accepts residents who are eligible for the medical assistance program under the Medical Assistance Act and, if applicable, the policies or limitations on access to services provided by the assisted-living facility for residents who seek care paid by the medical assistance program;

(d) The criteria for admission to and continued residence in the assisted-living facility and the process for addressing issues that may prevent admission to or continued residence in the assisted-living facility;

(e) The process for developing and updating the resident services agreement;

(f) For facilities that have special care units for dementia, the additional services provided to meet the special needs of persons with dementia; and

(g) Whether or not the assisted-living facility provides part-time or intermittent complex nursing interventions.

(4) Each assisted-living facility shall enter into a resident services agreement in consultation with each resident.

(5)(a) A facility shall not request or require a third-party guarantee of payment as a condition of admission, expedited admission, or continued stay in the facility.

(b) A facility may request and require a resident representative who has legal access to a resident's income or resources to sign a contract, without incurring personal financial liability, to provide payment to the facility from such resident's income or resources. For purposes of this subsection, resident

representative has the same meaning as defined in 42 C.F.R. 483.5, as such regulation existed on January 31, 2024.

(c) If a person other than the resident informs the assisted-living facility that such person wants to guarantee payment of a resident's expenses, the person shall execute a separate written agreement. No provision in the separate written agreement shall conflict with this subsection. The separate written agreement shall be provided to the guarantor of payment and shall contain the following statements:

(i) "Do not sign this agreement unless you voluntarily agree to be financially liable for paying the patient's expenses.";

(ii) "You may change your mind within forty-eight hours after signing this agreement by notifying the facility that you want to revoke this agreement.";  
and

(iii) "You may call the state long-term care ombudsman for an explanation of your rights.".

(d) Nothing in this subsection shall permit an individual with legal access to a resident's income or resources to avoid liability for violation of such individual's fiduciary duty.

Sec. 14. Section 84-168, Reissue Revised Statutes of Nebraska, is amended to read:

84-168 (1) By appropriate executive order, the Governor may accept on behalf of the state full or partial cession or retrocession of federal jurisdiction, including criminal, or civil, or juvenile, over any lands, except Indian lands, in federal enclaves within the state where such cession or retrocession has been offered by appropriate federal authority.

(2) To be accepted by the Governor, such offer must:

(a) Clearly state the subject matter of the offer, including specifically identifying whether it includes matters of criminal, civil, or juvenile jurisdiction and the scope of any concurrent jurisdiction;

(b) Provide a metes and bounds description of the boundaries; and

(c) Indicate whether the offer includes future contiguous expansions of land acquired for military purposes.

(3) An executive order accepting a cession or retrocession of jurisdiction shall be filed in the office of the Secretary of State and in the office of the register of deeds of the county in which the affected real estate is located. Upon filing, the Governor shall cause a certified copy of the executive order and any documents filed under this subsection to be sent to the appropriate federal authority.

(4) If an area of concurrent jurisdiction between the state and the federal government is established pursuant to this section, any state agency or political subdivision may enter into a memorandum of understanding with any federal agency for coordination and designation of responsibilities relating to such concurrent jurisdiction.

Sec. 15. Original sections 25-3003, 25-3004, 30-2446, 30-2603, 30-3816, 30-3828, 30-4002, 40-101, 40-103, 43-2707, 71-5905, and 84-168, Reissue Revised Statutes of Nebraska, and sections 30-24,129 and 30-3402, Revised Statutes Cumulative Supplement, 2022, are repealed.

Sec. 16. The following section is outright repealed: Section 40-102, Reissue Revised Statutes of Nebraska.