

LEGISLATIVE BILL 373

Approved by the Governor January 31, 1984

Introduced by Judiciary Committee, Beutler, 28,
Chairperson; Jacobson, 33;
Pirsch, 10; R. Johnson, 34; Chronister, 18

AN ACT relating to probate; to amend section 30-2408, Reissue Revised Statutes of Nebraska, 1943, section 33-126.03, Revised Statutes Supplement, 1982, and section 33-125, Revised Statutes Supplement, 1983; to change a limitation on certain proceedings; to change provisions relating to fees as prescribed; and to repeal the original sections.

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

Section 1. That section 30-2408, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2408. No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except (1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding; (2) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person; (3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of twelve months from the informal probate or three years from the decedent's death; and (4) an informal probate or appointment or a formal testacy or appointment proceeding may be commenced thereafter if no formal or informal proceeding for probate or proceeding concerning the succession or administration has occurred within the three-year period, but ~~if proceedings are brought under~~

this subdivision the personal representative shall have no right to possess or receive estate assets as provided in section 30-2470 beyond that necessary to confirm title thereto in the rightful successors to the estate, and claims other than expenses of administration may not be presented against the estate. These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under (1) or (2) above, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death.

Sec. 2. That section 33-125, Revised Statutes Supplement, 1983, be amended to read as follows:

33-125. In probate matters the county court shall be entitled to receive the following fees: (1) For (a) the informal probate of a will or informal appointment of a personal representative, or both, or (b) the determination of intestacy and heirs without requesting the appointment of an administrator, or (c) summary proceedings in small estates under sections 30-24, 127 and 30-24, 128, or (d) adjudication of a contested claim, or (e) any other proceeding under the Nebraska Probate Code for which no court fee is established by statute, twenty dollars; and (2) for all proceedings relating to the formal settlement of the estate of a deceased person where the value does not exceed one thousand dollars, twenty dollars; where the value exceeds one thousand dollars and is not more than two thousand dollars, thirty dollars; where the value exceeds two thousand dollars and is not more than five thousand dollars, fifty dollars; where the value exceeds five thousand dollars and is not more than ten thousand dollars, seventy dollars; where the value exceeds ten thousand dollars and is not more than twenty-five thousand dollars, eighty dollars; where the value exceeds twenty-five thousand dollars and is not more than fifty thousand dollars, one hundred dollars; where the value exceeds fifty thousand dollars and is not more than seventy-five thousand dollars, one hundred twenty dollars; where the value exceeds seventy-five thousand dollars and is not more than one hundred thousand dollars, one hundred sixty dollars; where the value exceeds one hundred thousand dollars and is not more than one hundred and twenty-five thousand dollars, two hundred and twenty dollars; where the value exceeds one hundred and twenty-five thousand dollars and is not more than one hundred and fifty thousand dollars, two hundred and fifty dollars; where the value exceeds one hundred and fifty thousand dollars and is not more than one hundred and seventy-five thousand dollars, two hundred and seventy dollars; where the value exceeds one hundred and seventy-five thousand dollars and is not more than two

hundred thousand dollars, three hundred dollars; where the value exceeds two hundred thousand dollars and is not more than three hundred thousand dollars, three hundred and fifty dollars; where the value exceeds three hundred thousand dollars and is not more than four hundred thousand dollars, four hundred dollars; where the value exceeds four hundred thousand dollars and is not more than five hundred thousand dollars, five hundred dollars; where the value exceeds five hundred thousand dollars and is not more than seven hundred and fifty thousand dollars, six hundred dollars; where the value exceeds seven hundred and fifty thousand dollars and is not more than one million dollars, seven hundred dollars; where the value exceeds one million dollars and is not more than two million five hundred thousand dollars, eight hundred dollars; where the value exceeds two million five hundred thousand dollars and is not more than five million dollars, one thousand dollars; and on all estates where the value exceeds five million dollars, one thousand five hundred dollars.

The above fees shall be based on the gross value of the estate, including both real and personal property. The gross value shall mean the actual value of the estate less liens, and shall be determined as of the time of the death. Such fees shall be in full for any and all services to be performed by the court in the settlement of an estate wherein no contest arises, and no additional fees shall be charged for services performed in connection with petitions, hearing, and orders in the course of such administration. The same shall include one certified copy of each order or instrument made for record in the office of the county clerk or register of deeds. In other cases where it shall be necessary to copy instruments, the county court shall be allowed the fees provided in section 33-126.05. There shall be credited against the fees specified in subdivision (2) of this section any fees previously paid for probate matters relating to the estate of such deceased person. In all estates in which it becomes necessary to reappoint an executor, administrator, or personal representative after his or her authority to act terminates or appoint a special administrator, thirty dollars shall be allowed for making such appointment. In all cases where a petition for probate of will, or appointment of an administrator, special administrator, personal representative, guardian, or trustee, or any other petition for an order in probate matters is filed and no appointment is made or order entered and ~~said~~ the cause is dismissed, the fee shall be ten dollars. In formal proceedings pursuant to the provisions of Chapter 30, article 25, the fees provided under this section shall be based upon the value of all property present in Nebraska at the time of death. No fee shall be charged for filings in probate matters in the absence of a request for a court order or other court proceedings thereon. All proceedings

which are commenced as formal proceedings or which are determined by the court to be formal proceedings shall be subject to the fees prescribed in subdivision (2) of this section. A determination of inheritance tax in an estate proceeding which is otherwise informal shall not render the proceeding formal.

Sec. 3. That section 33-126.03, Revised Statutes Supplement, 1982, be amended to read as follows:

33-126.03. The fees provided in subdivision (2) of section 33-125 for the formal settlement of the estate of a deceased person include matters for the determination of inheritance tax upon the estate under the provisions of Chapter 77, article 20. In all other matters for the determination of inheritance tax under the provisions of Chapter 77, article 20, the county court shall be entitled to receive fees of fifteen dollars. Fees under this section shall not be charged if fees have been imposed pursuant to subdivision (2) of section 33-125. Except in cases instituted by the county attorney, such fee shall be paid by the person petitioning for such determination.

Sec. 4. That original section 30-2408, Reissue Revised Statutes of Nebraska, 1943, section 33-126.03, Revised Statutes Supplement, 1982, and section 33-125, Revised Statutes Supplement, 1983, are repealed.