

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 268

FINAL READING

Introduced by Schumacher, 22; Kintner, 2.

Read first time January 11, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to medical assistance; to amend sections
2 24-517, 25-2154, 30-2483, 30-3880, 30-3881, 30-3882, 33-109, and
3 44-371, Reissue Revised Statutes of Nebraska, and sections 52-1004,
4 68-901, 68-919, 71-605, 77-2018.02, and 77-3903, Revised Statutes
5 Cumulative Supplement, 2016; to change and eliminate provisions
6 relating to court jurisdiction, certain recording fees, and medical
7 assistance reimbursement; to change the Medical Assistance Act as
8 prescribed; to harmonize provisions; to provide severability; and to
9 repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 24-517, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 24-517 Each county court shall have the following jurisdiction:

4 (1) Exclusive original jurisdiction of all matters relating to
5 decedents' estates, including the probate of wills and the construction
6 thereof, except as provided in subsection (c) of section 30-2464 and
7 section 30-2486;

8 (2) Exclusive original jurisdiction in all matters relating to the
9 guardianship of a person, except if a separate juvenile court already has
10 jurisdiction over a child in need of a guardian, concurrent original
11 jurisdiction with the separate juvenile court in such guardianship;

12 (3) Exclusive original jurisdiction of all matters relating to
13 conservatorship of any person, including (a) original jurisdiction to
14 consent to and authorize a voluntary selection, partition, and setoff of
15 a ward's interest in real estate owned in common with others and to
16 exercise any right of the ward in connection therewith which the ward
17 could exercise if competent and (b) original jurisdiction to license the
18 sale of such real estate for cash or on such terms of credit as shall
19 seem best calculated to produce the highest price subject only to the
20 requirements set forth in section 30-3201;

21 (4) Concurrent jurisdiction with the district court to involuntarily
22 partition a ward's interest in real estate owned in common with others;

23 (5) Concurrent original jurisdiction with the district court in all
24 civil actions of any type when the amount in controversy is forty-five
25 thousand dollars or less through June 30, 2005, and as set by the Supreme
26 Court pursuant to subdivision (b) of this subdivision on and after July
27 1, 2005.

28 (a) When the pleadings or discovery proceedings in a civil action
29 indicate that the amount in controversy is greater than the
30 jurisdictional amount of subdivision (5) of this section, the county
31 court shall, upon the request of any party, certify the proceedings to

1 the district court as provided in section 25-2706. An award of the county
2 court which is greater than the jurisdictional amount of subdivision (5)
3 of this section is not void or unenforceable because it is greater than
4 such amount, however, if an award of the county court is greater than the
5 jurisdictional amount, the county court shall tax as additional costs the
6 difference between the filing fee in district court and the filing fee in
7 county court.

8 (b) The Supreme Court shall adjust the jurisdictional amount for the
9 county court every fifth year commencing July 1, 2005. The adjusted
10 jurisdictional amount shall be equal to the then current jurisdictional
11 amount adjusted by the average percentage change in the unadjusted
12 Consumer Price Index for All Urban Consumers published by the Federal
13 Bureau of Labor Statistics for the five-year period preceding the
14 adjustment date. The jurisdictional amount shall be rounded to the
15 nearest one-thousand-dollar amount;

16 (6) Concurrent original jurisdiction with the district court in any
17 criminal matter classified as a misdemeanor or for any infraction. The
18 district court shall have concurrent original jurisdiction in any
19 criminal matter classified as a misdemeanor that arises from the same
20 incident as a charged felony;

21 (7) Concurrent original jurisdiction with the district court in
22 domestic relations matters as defined in section 25-2740 and with the
23 district court and separate juvenile court in paternity or custody
24 determinations as provided in section 25-2740;

25 (8) Concurrent original jurisdiction with the district court in
26 matters arising under the Nebraska Uniform Trust Code;

27 (9) Exclusive original jurisdiction in any action based on violation
28 of a city or village ordinance, except with respect to violations
29 committed by persons under eighteen years of age;

30 (10) The jurisdiction of a juvenile court as provided in the
31 Nebraska Juvenile Code when sitting as a juvenile court in counties which

1 have not established separate juvenile courts;

2 (11) Exclusive original jurisdiction in matters of adoption, except
3 if a separate juvenile court already has jurisdiction over the child to
4 be adopted, concurrent original jurisdiction with the separate juvenile
5 court;

6 (12) Exclusive original jurisdiction in matters arising under the
7 Nebraska Uniform Custodial Trust Act;

8 (13) Concurrent original jurisdiction with the district court in any
9 matter relating to a power of attorney and the action or inaction of any
10 agent acting under a power of attorney;

11 (14) Exclusive original jurisdiction in any action arising under
12 sections 30-3401 to 30-3432;

13 (15) Exclusive original jurisdiction in matters arising under the
14 Nebraska Uniform Transfers to Minors Act;

15 (16) Concurrent original jurisdiction with the district court in
16 matters arising under the Uniform Principal and Income Act;

17 (17) Concurrent original jurisdiction with the district court in
18 matters arising under the Uniform Testamentary Additions to Trusts Act
19 (1991) except as otherwise provided in subdivision (1) of this section;

20 and

21 (18) Concurrent original jurisdiction with the district court to
22 determine contribution rights under section 68-919; and

23 (19) ~~(18)~~ All other jurisdiction heretofore provided and not
24 specifically repealed by Laws 1972, Legislative Bill 1032, and such other
25 jurisdiction as hereafter provided by law.

26 Sec. 2. Section 25-2154, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 25-2154 In all cases of foreclosure of mortgages in the several
29 counties in the state, it shall be the duty of the clerk of the district
30 court, on the satisfaction or payment of the amount of the decree, to
31 forward to the register of deeds a certificate setting forth the names of

1 parties, plaintiff and defendant, descriptions of the premises mentioned
2 in the decree, and the book and page where the mortgage foreclosed is
3 recorded. For such certificate the clerk of the district court shall
4 collect, ~~until January 1, 2018,~~ the fee required pursuant to section
5 33-109 for recording the certificate ~~or, on and after January 1, 2018, a~~
6 ~~fee of three dollars.~~ Such amount shall be taxed as part of the costs in
7 the case, and such sum shall be paid to the register of deeds as the fee
8 for recording the certificate.

9 Sec. 3. Section 30-2483, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 30-2483 (a) Unless notice has already been given under this article
12 and except when an appointment of a personal representative is made
13 pursuant to subdivision (4) of section 30-2408, the clerk of the court
14 upon the appointment of a personal representative shall publish a notice
15 once a week for three successive weeks in a newspaper of general
16 circulation in the county announcing the appointment and the address of
17 the personal representative, and notifying creditors of the estate to
18 present their claims within two months after the date of the first
19 publication of the notice or be forever barred. The first publication
20 shall be made within thirty days after the appointment. The party
21 instituting or maintaining the proceeding or his or her attorney is
22 required to mail the published notice and give proof thereof in
23 accordance with section 25-520.01.

24 (b) If the decedent was fifty-five years of age or older or resided
25 in a medical institution as defined in subsection (1) of section 68-919,
26 the notice shall also be provided ~~mailed~~ to the Department of Health and
27 Human Services with the decedent's social security number and, if the
28 decedent was predeceased by a spouse available upon reasonable
29 investigation, the name and social security number of ~~the decedent's~~
30 spouse if such spouse is deceased. The notice shall be provided to the
31 department in a delivery manner and at an address designated by the

1 department, which manner may include email. The department shall post the
2 acceptable manner of delivering notice on its web site. Any notice that
3 fails to conform with such manner is void and constitutes neither notice
4 to the department nor a waiver application for purposes of any statute or
5 regulation that requires that a notice or waiver application be provided
6 to the department.

7 Sec. 4. Section 30-3880, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 30-3880 (UTC 815) (a) A trustee, without authorization by the court,
10 may exercise:

11 (1) powers conferred by the terms of the trust; and

12 (2) except as limited by the terms of the trust:

13 (A) all powers over the trust property which an unmarried competent
14 owner has over individually owned property;

15 (B) any other powers appropriate to achieve the proper investment,
16 management, and distribution of the trust property; and

17 (C) any other powers conferred by the Nebraska Uniform Trust Code.

18 (b) The exercise of a power is subject to the fiduciary duties
19 prescribed by sections 30-3866 to 30-3882.

20 (c) After the death of the trustor occurring after August 30, 2015,
21 a trustee of a revocable trust which has become irrevocable by reason of
22 the death of the trustor shall not transfer trust property to a
23 beneficiary described in section 77-2004 or 77-2005 in relation to the
24 trustor prior to satisfaction of all claims for medical assistance
25 ~~medicaid~~ reimbursement pursuant to section 68-919 to the extent necessary
26 to discharge any such claim remaining unpaid after application of the
27 assets of the trustor's probate estate. The Department of Health and
28 Human Services may, upon application of a trustee, waive the restriction
29 on transfers established by this subsection in cases in which the
30 department determines that either there is no medical assistance ~~medicaid~~
31 reimbursement due or after the proposed transfer is made there will be

1 sufficient assets remaining in the trust or trustor's probate estate to
2 satisfy all such claims for medical assistance ~~medicaid~~ reimbursement. If
3 there is no medical assistance ~~medicaid~~ reimbursement due, the department
4 shall waive the restriction within sixty days after receipt of the
5 trustee's request for waiver and the deceased trustor's name and social
6 security number and, if the trustor was predeceased by a spouse available
7 ~~upon reasonable investigation~~, the name and social security number of the
8 ~~trustor's spouse if such spouse is deceased~~. A trustee who is a financial
9 institution as defined in section 77-3801, a trust company chartered
10 pursuant to the Nebraska Trust Company Act, or an attorney licensed to
11 practice in this state may distribute assets from the trust prior to the
12 receipt of the waiver from the department if the trustee signs a recital
13 under oath ~~and mailed by certified mail to the department~~ that states the
14 decedent's name and social security number and, if the decedent was
15 predeceased by a spouse available upon reasonable investigation, the name
16 and social security number of ~~the decedent's spouse if such spouse is~~
17 ~~deceased~~, and that the trustor was not a recipient of medical assistance
18 and no claims for medical assistance exist under section 68-919. The
19 trustee shall send such recital to the department. A trustee who makes
20 such a recital knowing the recital is false becomes personally liable for
21 medical assistance reimbursement pursuant to section 68-919 to the extent
22 of the assets distributed from the trust necessary to discharge any such
23 claim remaining unpaid after application of the assets of the
24 transferor's probate estate. The request for waiver and the recital
25 described in this subsection shall be provided to the department in a
26 delivery manner and at an address designated by the department, which
27 manner may include email. The department shall post the acceptable manner
28 of delivery on its web site. Any request for waiver or recital that fails
29 to conform with such manner is void.

30 Sec. 5. Section 30-3881, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 30-3881 (UTC 816) (a) Without limiting the authority conferred by
2 section 30-3880, a trustee may:

3 (1) collect trust property and accept or reject additions to the
4 trust property from a settlor or any other person;

5 (2) acquire or sell property, for cash or on credit, at public or
6 private sale;

7 (3) exchange, partition, or otherwise change the character of trust
8 property;

9 (4) deposit trust money in an account in a regulated financial-
10 service institution;

11 (5) borrow money, including from the trustee, with or without
12 security, and mortgage or pledge trust property for a period within or
13 extending beyond the duration of the trust;

14 (6) with respect to an interest in a proprietorship, partnership,
15 limited liability company, business trust, corporation, or other form of
16 business or enterprise, continue the business or other enterprise and
17 take any action that may be taken by shareholders, members, or property
18 owners, including merging, dissolving, or otherwise changing the form of
19 business organization or contributing additional capital;

20 (7) with respect to stocks or other securities, exercise the rights
21 of an absolute owner, including the right to:

22 (A) vote, or give proxies to vote, with or without power of
23 substitution, or enter into or continue a voting trust agreement;

24 (B) hold a security in the name of a nominee or in other form
25 without disclosure of the trust so that title may pass by delivery;

26 (C) pay calls, assessments, and other sums chargeable or accruing
27 against the securities, and sell or exercise stock subscription or
28 conversion rights; and

29 (D) deposit the securities with a depository or other regulated
30 financial-service institution;

31 (8) with respect to an interest in real property, construct, or make

1 ordinary or extraordinary repairs to, alterations to, or improvements in,
2 buildings or other structures, demolish improvements, raze existing or
3 erect new party walls or buildings, subdivide or develop land, dedicate
4 land to public use or grant public or private easements, and make or
5 vacate plats and adjust boundaries;

6 (9) enter into a lease for any purpose as lessor or lessee,
7 including a lease or other arrangement for exploration and removal of
8 natural resources, with or without the option to purchase or renew, for a
9 period within or extending beyond the duration of the trust;

10 (10) grant an option involving a sale, lease, or other disposition
11 of trust property or acquire an option for the acquisition of property,
12 including an option exercisable beyond the duration of the trust, and
13 exercise an option so acquired;

14 (11) insure the property of the trust against damage or loss and
15 insure the trustee, the trustee's agents, and beneficiaries against
16 liability arising from the administration of the trust;

17 (12) abandon or decline to administer property of no value or of
18 insufficient value to justify its collection or continued administration;

19 (13) with respect to possible liability for violation of
20 environmental law:

21 (A) inspect or investigate property the trustee holds or has been
22 asked to hold, or property owned or operated by an organization in which
23 the trustee holds or has been asked to hold an interest, for the purpose
24 of determining the application of environmental law with respect to the
25 property;

26 (B) take action to prevent, abate, or otherwise remedy any actual or
27 potential violation of any environmental law affecting property held
28 directly or indirectly by the trustee, whether taken before or after the
29 assertion of a claim or the initiation of governmental enforcement;

30 (C) decline to accept property into trust or disclaim any power with
31 respect to property that is or may be burdened with liability for

1 violation of environmental law;

2 (D) compromise claims against the trust which may be asserted for an
3 alleged violation of environmental law; and

4 (E) pay the expense of any inspection, review, abatement, or
5 remedial action to comply with environmental law;

6 (14) pay or contest any claim, settle a claim by or against the
7 trust, and release, in whole or in part, a claim belonging to the trust;

8 (15) pay taxes, assessments, compensation of the trustee and of
9 employees and agents of the trust, and other expenses incurred in the
10 administration of the trust;

11 (16) exercise elections with respect to federal, state, and local
12 taxes;

13 (17) select a mode of payment under any employee benefit or
14 retirement plan, annuity, or life insurance payable to the trustee,
15 exercise rights thereunder, including exercise of the right to
16 indemnification for expenses and against liabilities, and take
17 appropriate action to collect the proceeds;

18 (18) make loans out of trust property, including loans to a
19 beneficiary on terms and conditions the trustee considers to be fair and
20 reasonable under the circumstances, and the trustee has a lien on future
21 distributions for repayment of those loans;

22 (19) pledge trust property to guarantee loans made by others to the
23 beneficiary;

24 (20) appoint a trustee to act in another jurisdiction with respect
25 to trust property located in the other jurisdiction, confer upon the
26 appointed trustee all of the powers and duties of the appointing trustee,
27 require that the appointed trustee furnish security, and remove any
28 trustee so appointed;

29 (21) pay an amount distributable to a beneficiary who is under a
30 legal disability or who the trustee reasonably believes is incapacitated,
31 by paying it directly to the beneficiary or applying it for the

1 beneficiary's benefit, or by:

2 (A) paying it to the beneficiary's conservator or, if the
3 beneficiary does not have a conservator, the beneficiary's guardian;

4 (B) paying it to the beneficiary's custodian under the Nebraska
5 Uniform Transfers to Minors Act or custodial trustee under the Nebraska
6 Uniform Custodial Trust Act, and, for that purpose, creating a
7 custodianship or custodial trust;

8 (C) if the trustee does not know of a conservator, guardian,
9 custodian, or custodial trustee, paying it to an adult relative or other
10 person having legal or physical care or custody of the beneficiary, to be
11 expended on the beneficiary's behalf; or

12 (D) managing it as a separate fund on the beneficiary's behalf,
13 subject to the beneficiary's continuing right to withdraw the
14 distribution;

15 (22) on distribution of trust property or the division or
16 termination of a trust, make distributions in divided or undivided
17 interests, allocate particular assets in proportionate or
18 disproportionate shares, value the trust property for those purposes, and
19 adjust for resulting differences in valuation;

20 (23) resolve a dispute concerning the interpretation of the trust or
21 its administration by mediation, arbitration, or other procedure for
22 alternative dispute resolution;

23 (24) prosecute or defend an action, claim, or judicial proceeding in
24 any jurisdiction to protect trust property and the trustee in the
25 performance of the trustee's duties;

26 (25) sign and deliver contracts and other instruments that are
27 useful to achieve or facilitate the exercise of the trustee's powers; and

28 (26) on termination of the trust, exercise the powers appropriate to
29 wind up the administration of the trust and distribute the trust property
30 to the persons entitled to it.

31 (b) After the death of the trustor occurring after August 30, 2015,

1 a trustee of a revocable trust which has become irrevocable by reason of
2 the death of the trustor shall not transfer trust property to a
3 beneficiary described in section 77-2004 or 77-2005 in relation to the
4 trustor prior to satisfaction of all claims for medical assistance
5 ~~medicaid~~ reimbursement pursuant to section 68-919 to the extent necessary
6 to discharge any such claim remaining unpaid after application of the
7 assets of the trustor's probate estate. The Department of Health and
8 Human Services may, upon application of a trustee, waive the restriction
9 on transfers established by this subsection in cases in which the
10 department determines that either there is no medical assistance ~~medicaid~~
11 reimbursement due or after the proposed transfer is made there will be
12 sufficient assets remaining in the trust or trustor's probate estate to
13 satisfy all such claims for medical assistance ~~medicaid~~ reimbursement. If
14 there is no medical assistance ~~medicaid~~ reimbursement due, the department
15 shall waive the restriction within sixty days after receipt of the
16 trustee's request for waiver and the deceased trustor's name and social
17 security number and, if the trustor was predeceased by a spouse available
18 ~~upon reasonable investigation~~, the name and social security number of the
19 ~~trustor's spouse if such spouse is deceased~~. A trustee who is a financial
20 institution as defined in section 77-3801, a trust company chartered
21 pursuant to the Nebraska Trust Company Act, or an attorney licensed to
22 practice in this state may distribute assets from the trust prior to the
23 receipt of the waiver from the department if the trustee signs a recital
24 under oath ~~and mailed by certified mail to the department~~ that states the
25 decedent's name and social security number and, if the decedent was
26 predeceased by a spouse available upon reasonable investigation, the name
27 and social security number of ~~the decedent's spouse if such spouse is~~
28 ~~deceased~~, and that the trustor was not a recipient of medical assistance
29 and no claims for medical assistance exist under section 68-919. The
30 trustee shall send such recital to the department. A trustee who makes
31 such a recital knowing the recital is false becomes personally liable for

1 medical assistance reimbursement pursuant to section 68-919 to the extent
2 of the assets distributed from the trust necessary to discharge any such
3 claim remaining unpaid after application of the assets of the
4 transferor's probate estate. The request for waiver and the recital
5 described in this subsection shall be provided to the department in a
6 delivery manner and at an address designated by the department, which
7 manner may include email. The department shall post the acceptable manner
8 of delivery on its web site. Any request for waiver or recital that fails
9 to conform with such manner is void.

10 Sec. 6. Section 30-3882, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 30-3882 (UTC 817) (a) Except as limited in subsection (d) of this
13 section, upon termination or partial termination of a trust, the trustee
14 may send to the beneficiaries a proposal for distribution. The right of
15 any beneficiary to object to the proposed distribution terminates if the
16 beneficiary does not notify the trustee of an objection within thirty
17 days after the proposal was sent but only if the proposal informed the
18 beneficiary of the right to object and of the time allowed for objection.

19 (b) Except as limited in subsection (d) of this section, upon the
20 occurrence of an event terminating or partially terminating a trust, the
21 trustee shall proceed expeditiously to distribute the trust property to
22 the persons entitled to it, subject to the right of the trustee to retain
23 a reasonable reserve for the payment of debts, expenses, and taxes.

24 (c) A release by a beneficiary of a trustee from liability for
25 breach of trust is invalid to the extent:

26 (1) it was induced by improper conduct of the trustee; or

27 (2) the beneficiary, at the time of the release, did not know of the
28 beneficiary's rights or of the material facts relating to the breach.

29 (d) After the death of the trustor occurring after August 30, 2015,
30 a trustee of a revocable trust which has become irrevocable by reason of
31 the death of the trustor shall not transfer trust property to a

1 beneficiary described in section 77-2004 or 77-2005 in relation to the
2 trustor prior to satisfaction of all claims for medical assistance
3 ~~medicaid~~ reimbursement pursuant to section 68-919 to the extent necessary
4 to discharge any such claim remaining unpaid after application of the
5 assets of the trustor's probate estate. The Department of Health and
6 Human Services may, upon application of a trustee, waive the restriction
7 on transfers established by this subsection in cases in which the
8 department determines that either there is no medical assistance ~~medicaid~~
9 reimbursement due or after the proposed transfer is made there will be
10 sufficient assets remaining in the trust or trustor's probate estate to
11 satisfy all such claims for medical assistance ~~medicaid~~ reimbursement. If
12 there is no medical assistance ~~medicaid~~ reimbursement due, the department
13 shall waive the restriction within sixty days after receipt of the
14 trustee's request for waiver and the deceased trustor's name and social
15 security number and, if the trustor was predeceased by a spouse ~~available~~
16 ~~upon reasonable investigation~~, the name and social security number of the
17 ~~trustor's spouse if such spouse is deceased~~. A trustee who is a financial
18 institution as defined in section 77-3801, a trust company chartered
19 pursuant to the Nebraska Trust Company Act, or an attorney licensed to
20 practice in this state may distribute assets from the trust prior to the
21 receipt of the waiver from the department if the trustee signs a recital
22 under oath ~~and mailed by certified mail to the department~~ that states the
23 decedent's name and social security number and, if the decedent was
24 predeceased by a spouse ~~available upon reasonable investigation~~, the name
25 and social security number of the ~~decedent's spouse if such spouse is~~
26 ~~deceased~~, and that the trustor was not a recipient of medical assistance
27 and no claims for medical assistance exist under section 68-919. The
28 trustee shall send such recital to the department. A trustee who makes
29 such a recital knowing the recital is false becomes personally liable for
30 medical assistance reimbursement pursuant to section 68-919 to the extent
31 of the assets distributed from the trust necessary to discharge any such

1 claim remaining unpaid after application of the assets of the
2 transferor's probate estate. The request for waiver and the recital
3 described in this subsection shall be provided to the department in a
4 delivery manner and at an address designated by the department, which
5 manner may include email. The department shall post the acceptable manner
6 of delivery on its web site. Any request for waiver or recital that fails
7 to conform with such manner is void.

8 Sec. 7. Section 33-109, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 33-109 (1) (1)(a) This subdivision applies until January 1, 2018.
11 The register of deeds and the county clerk shall receive for recording a
12 deed, mortgage, or release, recording and indexing of a will, recording
13 and indexing of a decree in a testate estate, recording proof of
14 publication, or recording any other instrument, a fee of ten dollars for
15 the first page and six dollars for each additional page. Two dollars and
16 fifty cents of the ten-dollar fee for recording the first page and fifty
17 cents of the six-dollar fee for recording each additional page shall be
18 used exclusively for the purposes of preserving and maintaining public
19 records of the office of the register of deeds and for modernization and
20 technology needs relating to such records and preserving and maintaining
21 public records of a register of deeds office that has been consolidated
22 with another county office pursuant to section 22-417 and for
23 modernization and technology needs relating to such records. The funds
24 allocated under this subsection ~~subdivision~~ shall not be substituted for
25 other allocations of county general funds to the register of deeds or any
26 other county office for the purposes enumerated in this subsection
27 ~~subdivision~~.

28 ~~(b) This subdivision applies on and after January 1, 2018. The~~
29 ~~register of deeds and the county clerk shall receive for recording a~~
30 ~~deed, mortgage, or release, recording and indexing of a will, recording~~
31 ~~and indexing of a decree in a testate estate, recording proof of~~

1 ~~publication, or recording any other instrument, a fee of five dollars per~~
2 ~~page. For entering each instrument presented for record in the numerical~~
3 ~~index, the clerk or register of deeds shall receive the sum of fifty~~
4 ~~cents for each lot and each single block without lots in platted areas~~
5 ~~and fifty cents for each section in unplatted areas to be paid in advance~~
6 ~~by the person offering the instrument for record.~~

7 (2) The cost for a certified copy of any instrument filed or
8 recorded in the office of county clerk or register of deeds shall be one
9 dollar and fifty cents per page.

10 (3) No fees shall be received for recording instruments for the
11 Department of Health and Human Services pursuant to section 12 of this
12 act.

13 Sec. 8. Section 44-371, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 44-371 (1)(a) Except as provided in subdivision (1)(b) of this
16 section and in section 68-919, all proceeds, cash values, and benefits
17 accruing under any annuity contract, under any policy or certificate of
18 life insurance payable upon the death of the insured to a beneficiary
19 other than the estate of the insured, or under any accident or health
20 insurance policy shall be exempt from attachment, garnishment, or other
21 legal or equitable process and from all claims of creditors of the
22 insured and of the beneficiary if related to the insured by blood or
23 marriage, unless a written assignment to the contrary has been obtained
24 by the claimant.

25 (b) Subdivision (1)(a) of this section shall not apply to:

26 (i) An individual's aggregate interests greater than one hundred
27 thousand dollars in all loan values or cash values of all matured or
28 unmatured life insurance contracts and in all proceeds, cash values, or
29 benefits accruing under all annuity contracts owned by such individual;
30 and

31 (ii) An individual's interest in all loan values or cash values of

1 all matured or unmatured life insurance contracts and in all proceeds,
2 cash values, or benefits accruing under all annuity contracts owned by
3 such individual, to the extent that the loan values or cash values of any
4 matured or unmatured life insurance contract or the proceeds, cash
5 values, or benefits accruing under any annuity contract were established
6 or increased through contributions, premiums, or any other payments made
7 within three years prior to bankruptcy or within three years prior to
8 entry against the individual of a money judgment which thereafter becomes
9 final.

10 (c) An insurance company shall not be liable or responsible to any
11 person to determine or ascertain the existence or identity of any such
12 creditors prior to payment of any such loan values, cash values,
13 proceeds, or benefits.

14 (2) Notwithstanding subsection (1) of this section, proceeds, cash
15 values, and benefits accruing under any annuity contract or under any
16 policy or certificate of life insurance payable upon the death of the
17 insured to a beneficiary other than the estate of the insured shall not
18 be exempt from attachment, garnishment, or other legal or equitable
19 process by a judgment creditor of the beneficiary if the judgment against
20 the beneficiary was based on, arose from, or was related to an act,
21 transaction, or course of conduct for which the beneficiary has been
22 convicted by any court of a crime punishable only by life imprisonment or
23 death. No insurance company shall be liable or responsible to any person
24 to determine or ascertain the existence or identity of any such judgment
25 creditor prior to payment of any such proceeds, cash values, or benefits.
26 This subsection shall apply to any judgment rendered on or after January
27 1, 1995, irrespective of when the criminal conviction is or was rendered
28 and irrespective of whether proceedings for attachment, garnishment, or
29 other legal or equitable process were pending on March 14, 1997.

30 Sec. 9. Section 52-1004, Revised Statutes Cumulative Supplement,
31 2016, is amended to read:

1 52-1004 ~~(1) (1)(a) This subdivision applies until January 1, 2018.~~
2 The uniform fee, payable to the Secretary of State, for presenting for
3 filing and indexing and for filing and indexing each notice of lien or
4 certificate or notice affecting the lien pursuant to the Uniform Federal
5 Lien Registration Act shall be two times the fee required for recording
6 instruments with the register of deeds as provided in section 33-109.
7 There shall be no fee for the filing of a termination statement. The
8 uniform fee for each county more than one designated pursuant to
9 subsection (1) of section 52-1001 shall be the fee required for recording
10 instruments with the register of deeds as provided in section 33-109. The
11 Secretary of State shall deposit each fee received pursuant to this
12 subsection ~~subdivision~~ in the Uniform Commercial Code Cash Fund. Of the
13 fees received and deposited pursuant to this subsection ~~subdivision~~, the
14 Secretary of State shall remit the fee required for recording instruments
15 with the register of deeds as provided in section 33-109 to the register
16 of deeds of a county for each designation of such county in a filing
17 pursuant to subsection (1) of section 52-1001.

18 ~~(b) This subdivision applies on and after January 1, 2018. The~~
19 ~~uniform fee, payable to the Secretary of State, for presenting for filing~~
20 ~~and indexing and for filing and indexing each notice of lien or~~
21 ~~certificate or notice affecting the lien pursuant to the Uniform Federal~~
22 ~~Lien Registration Act shall be six dollars. There shall be no fee for the~~
23 ~~filing of a termination statement. The uniform fee for each county more~~
24 ~~than one designated pursuant to subsection (1) of section 52-1001 shall~~
25 ~~be three dollars. The Secretary of State shall deposit each fee received~~
26 ~~pursuant to this subdivision in the Uniform Commercial Code Cash Fund. Of~~
27 ~~the fees received and deposited pursuant to this subdivision, the~~
28 ~~Secretary of State shall remit three dollars to the register of deeds of~~
29 ~~a county for each designation of such county in a filing pursuant to~~
30 ~~subsection (1) of section 52-1001.~~

31 (2) The Secretary of State shall bill the district directors of

1 internal revenue or other appropriate federal officials on a monthly
2 basis for fees for documents presented or filed by them.

3 Sec. 10. Section 68-901, Revised Statutes Cumulative Supplement,
4 2016, is amended to read:

5 68-901 Sections 68-901 to 68-976 and sections 11 to 13 of this act
6 shall be known and may be cited as the Medical Assistance Act.

7 Sec. 11. (1) This section shall apply to the fullest extent
8 permitted by federal law and understandings entered into between the
9 state and the federal government. An applicant for medical assistance, or
10 a person acting on behalf of the applicant, shall disclose at the time of
11 application and, to the extent not owned at the time of application, at
12 the time of any subsequent review of the applicant's eligibility for
13 medical assistance all of his or her interests in any assets, including,
14 but not limited to, any security, bank account, intellectual property
15 right, contractual or lease right, real estate, trust, corporation,
16 limited liability company, or other entity, whether such interest is
17 direct or indirect, vested or contingent, or otherwise. The applicant or
18 a person acting on behalf of the applicant shall also disclose:

19 (a) Any income derived from such interests and the source of the
20 income; and

21 (b) Whether the income is generated directly or indirectly from (i)
22 the applicant's spouse or an individual who is related to the applicant
23 as described in section 77-2004 or 77-2005 or (ii) an entity controlled
24 by one or more individuals described in subdivision (1)(b)(i) of this
25 section. For purposes of this subdivision, control means individuals
26 listed in subdivision (1)(b)(i) of this section together own or have the
27 option to acquire more than fifty percent of the entity.

28 (2) If the applicant or a person acting on behalf of the applicant
29 willfully fails to make the disclosures required in this section, any
30 medical assistance obtained as a result of such failure is deemed
31 unlawfully obtained and the department shall seek recovery of such

1 medical assistance from the applicant or the estate of the recipient of
2 medical assistance as defined in subdivision (4)(b) of section 68-919.

3 (3) If income is derived from a related party as described in
4 subdivision (1)(b) of this section, the department shall determine
5 whether the income is or, in the case of a written lease, whether the
6 terms of the lease at the time it was entered into were commercially
7 reasonable and consistent with income or lease terms derived in the
8 relevant market area and negotiated at arms length between parties who
9 are not related. If the department determines that the income or lease
10 fails to meet these requirements, such income or lease shall be
11 considered a transfer of the applicant's assets for less than full
12 consideration and the department shall consider the resulting shortfall,
13 to the fullest extent permitted by federal law, when determining
14 eligibility for medical assistance or any share of cost or as otherwise
15 required by law. The burden of proof of commercial reasonableness rests
16 with the applicant. The department's determination on commercial
17 reasonableness may be appealed, and the appeal shall be in accordance
18 with the Administrative Procedure Act.

19 (4) An action for recovery of medical assistance obtained in
20 violation of this section may be brought by the department against the
21 applicant or against the estate of the recipient of medical assistance as
22 defined in subdivision (4)(b) of section 68-919 at any time before five
23 years after the death of both the applicant and the applicant's spouse,
24 if any.

25 (5) The department may adopt and promulgate rules and regulations to
26 carry out this section. The rules and regulations may include guidance on
27 the commercial reasonableness of lease terms.

28 Sec. 12. (1) For purposes of this section:

29 (a) Related transferee means:

30 (i) An individual who is related to the transferor as described in
31 section 77-2004 or 77-2005;

1 (ii) An entity controlled by one or more individuals described in
2 subdivision (1)(a)(i) of this section. For purposes of this subdivision,
3 control means individuals described in subdivision (1)(a)(i) of this
4 section together own or have the option to acquire more than fifty
5 percent of the entity; or

6 (iii) An irrevocable trust in which an individual described in
7 subdivision (1)(a)(i) of this section is a beneficiary; and

8 (b) Related transferee does not include the recipient's spouse, if
9 any, or a child who either is under twenty-one years of age or is blind
10 or totally and permanently disabled as defined by Supplemental Security
11 Income criteria.

12 (2) This section shall apply to the fullest extent permitted by
13 federal law and understandings entered into between the state and the
14 federal government. This section provides security for the recovery of
15 the indebtedness to the department for medical assistance as provided in
16 section 68-919. This section applies to transfers of real estate made on
17 or after the effective date of this act. If, during the transferor's
18 lifetime, an interest in real estate is irrevocably transferred to a
19 related transferee for less than full consideration and the real estate
20 transferred to the related transferee is subject to rights, actual or
21 constructive possession, or powers retained by the transferor in a deed
22 or other instrument, the interest in the real estate when acquired by the
23 related transferee is subject to a lien in favor of the State of Nebraska
24 for medical assistance reimbursement pursuant to section 68-919 to the
25 extent necessary to secure payment in full of any claim remaining unpaid
26 after application of the assets of the transferor's probate estate, not
27 to exceed the amount determined under subsection (6) of this section. The
28 lien does not attach to any interest retained by the transferor. Except
29 as provided in this section, the lien applies to medical assistance
30 provided before, at the same time as, or after the filing of the notice
31 of lien under subsection (4) of this section.

1 (3) Within fifteen days after receipt of a statement required by
2 section 76-214 indicating that the underlying real estate transfer was
3 between relatives or, if to a trustee, where the trustor or settlor and
4 the beneficiary are relatives, the register of deeds shall send a copy of
5 such statement, together with the parcel identification number, if
6 ascertainable, to the department. The copy shall be provided to the
7 department in a delivery manner and at an address designated by the
8 department, which manner may include email. The department shall post the
9 acceptable manner of delivering the copy on its web site or otherwise
10 communicate the manner of delivery to the registers of deeds.

11 (4) The lien imposed by subsection (2) of this section becomes
12 effective upon the filing of a notice of lien in accordance with this
13 subsection. The department may file a notice of the lien imposed by
14 subsection (2) of this section only after the department receives an
15 application for medical assistance on behalf of a transferor. The notice
16 must be filed in the office of the register of deeds of the county or
17 counties in which the real estate subject to the lien is located. The
18 notice must provide the legal description of the real estate subject to
19 the lien, specify the amount then secured by the lien, and indicate that
20 the lien also covers any future medical assistance provided to the
21 transferor. The department shall provide the register of deeds with a
22 self-addressed return envelope bearing sufficient postage for purposes of
23 returning to the department a file-stamped copy of the notice of lien,
24 which the register of deeds shall mail to the department. The lien is not
25 valid against the owner of an interest in real estate received by a
26 grantee who is not a related transferee pursuant to a deed or other
27 instrument if such deed or other instrument is filed prior to the notice
28 of lien. A lien that is not valid under this subsection shall be released
29 by the department upon notice thereof from such grantee or a subsequent
30 bona fide purchaser. A lien is valid against any subsequent creditor only
31 if notice of such lien has been filed by the department in accordance

1 with this subsection. Any mortgage or trust deed recorded prior to the
2 filing of a notice of lien shall have priority over such lien. Except as
3 provided in subsection (5) of this section, any optional future advance
4 or advance necessary to protect the security secured by the mortgage or
5 trust deed shall have the same priority as the mortgage or trust deed.

6 (5) Any optional future advance made pursuant to a mortgage or trust
7 deed on real estate recorded prior to the filing of a notice of lien
8 under subsection (4) of this section shall be junior to such lien only if
9 the optional future advance is made after:

10 (a) A notice of lien has been filed by the department in accordance
11 with subsection (4) of this section; and

12 (b) Written notice of the filing for record of such notice of lien
13 has been received by the mortgagee or beneficiary at the address of the
14 mortgagee or beneficiary set forth in the mortgage or trust deed or, if
15 the mortgage or trust deed has been assigned, by the assignee at the
16 address of the most recent assignee reflected in a recorded assignment of
17 the mortgage or trust deed. The notice under this subdivision shall be
18 sent by the department by certified mail to the applicable mortgagee,
19 beneficiary, or assignee.

20 (6)(a) The lien authorized in this section is limited to the lesser
21 of (i) the amount necessary to fully satisfy any reimbursement
22 obligations remaining unpaid after application of any assets from the
23 transferor's probate estate or (ii) the actual value of the real estate
24 at the time that the lien is enforced minus the consideration adjustment
25 and minus the cost of the improvements made to the real estate by or on
26 behalf of the related transferee, if any.

27 (b) For purposes of this subsection:

28 (i) Actual value has the same meaning as in section 77-112;

29 (ii) Consideration adjustment means the amount of consideration paid
30 by the related transferee to the transferor for the real estate
31 multiplied by the growth factor; and

1 (iii) Growth factor means the actual value of the real estate at the
2 time the lien is enforced divided by the actual value of the real estate
3 at the time the consideration was paid.

4 (c) The burden of proof for showing the consideration paid for the
5 real estate, the cost of any improvements to the real estate, and the
6 actual value of the real estate rests with the related transferee or his
7 or her successor in interest.

8 (7) If a deed or other instrument transferring an interest in real
9 estate contains a recital acknowledged by the grantor stating that the
10 grantee is not a related transferee, the real estate being transferred
11 shall not be subject to the lien imposed by this section. A related
12 transferee who takes possession or otherwise enjoys the benefits of the
13 transfer knowing the recital is false becomes personally liable for
14 medical assistance reimbursement to the extent necessary to discharge any
15 claim remaining unpaid after application of the assets of the
16 transferor's probate estate, not to exceed the amount determined under
17 subsection (6) of this section.

18 (8) The department shall release or subordinate the lien authorized
19 in this section upon application by the related transferee in which the
20 related transferee agrees to indemnify the department for medical
21 assistance reimbursement pursuant to section 68-919 to the extent
22 necessary to discharge any such claim remaining unpaid after application
23 of the assets of the transferor's probate estate, not to exceed the
24 amount determined under subsection (6) of this section. The department
25 may require the application submitted pursuant to this subsection to be
26 accompanied by good and sufficient sureties or other evidence determined
27 by the department to be sufficient to secure the liability. The
28 department shall also release the lien upon a satisfactory showing of
29 undue hardship or a showing that the interest subject to the lien is not
30 one from which medical assistance reimbursement may be had.

31 (9)(a) Any indemnity and any lien shall be released upon:

1 (i) Notice delivered to the department, by certified mail, return
2 receipt requested, of (A) the death and identification, including the
3 social security number, of the transferor, (B) the legal description of
4 the real estate subject to the indemnity or lien, and (C) the names and
5 addresses of the owners of record of the real estate; and

6 (ii) The department either (A) filing a release of lien with the
7 register of deeds of the county or counties in which the real estate
8 subject to the lien is located or (B) not filing an action to foreclose
9 the lien or collect on the indemnity within one year after delivery of
10 the notice required under subdivision (9)(a)(i) of this section.

11 (b) Proof of delivery of such notice shall be made by filing a copy
12 of the notice and a copy of the certified mail return receipt with the
13 register of deeds of the county or counties in which the real estate
14 subject to the lien is located.

15 (10) The department may adopt and promulgate rules and regulations
16 to carry out this section.

17 Sec. 13. A medical provider shall have the authority of a guardian
18 and conservator for the limited purpose of making application for medical
19 assistance on behalf of a person whom the provider is treating if the
20 person is unconscious or otherwise is unable to apply for medical
21 assistance and does not have an existing power of attorney or a court-
22 appointed individual to apply on the person's behalf.

23 Sec. 14. Section 68-919, Revised Statutes Cumulative Supplement,
24 2016, is amended to read:

25 68-919 (1) The recipient of medical assistance under the medical
26 assistance program shall be indebted to the department for the total
27 amount paid for medical assistance on behalf of the recipient if:

28 (a) The recipient was fifty-five years of age or older at the time
29 the medical assistance was provided; or

30 (b) The recipient resided in a medical institution and, at the time
31 of institutionalization or application for medical assistance, whichever

1 is later, the department determines that the recipient could not have
2 reasonably been expected to be discharged and resume living at home. For
3 purposes of this section, medical institution means a nursing facility,
4 an intermediate care facility for persons with developmental
5 disabilities, or an inpatient hospital.

6 (2) The debt accruing under subsection (1) of this section arises
7 during the life of the recipient but shall be held in abeyance until the
8 death of the recipient. Any such debt to the department that exists when
9 the recipient dies shall be recovered only after the death of the
10 recipient's spouse, if any, and only after when the recipient is not
11 survived by a child who either is under twenty-one years of age or is
12 blind or totally and permanently disabled as defined by the Supplemental
13 Security Income criteria. In recovering such debt, the department shall
14 not foreclose on a lien on the home of the recipient (a) if a sibling of
15 the recipient with an equity interest in the home has lawfully resided in
16 the home for at least one year before the recipient's admission and has
17 lived there continuously since the date of the recipient's admission or
18 (b) while the home is the residence of an adult child who has lived in
19 the recipient's home for at least two years immediately before the
20 recipient was institutionalized, has lived there continuously since that
21 time, and can establish to the satisfaction of the department that he or
22 she provided care that delayed the recipient's admission.

23 (3) The debt shall include the total amount of medical assistance
24 provided when the recipient was fifty-five years of age or older or
25 during a period of institutionalization as described in subsection (1) of
26 this section and shall not include interest.

27 (4)(a) This subsection applies to the fullest extent permitted by 42
28 U.S.C. 1396p, as such section existed on January 1, 2017. It is the
29 intent of the Legislature that the debt specified in subsection (1) of
30 this section be collected by the department before any portion of the
31 estate of a recipient of medical assistance is enjoyed by or transferred

1 to a person not specified in subsection (2) of this section as a result
2 of the death of such recipient. (4) The debt may be recovered from the
3 estate of a recipient of medical assistance. ~~τ~~

4 (b) For purposes of this section:

5 (i) Estate of a recipient of medical assistance means including any
6 real estate property, personal property, or other asset in which the
7 recipient had any legal title or interest at the time of the recipient's
8 death, to the extent of such interests. In furtherance and not in
9 limitation of the foregoing, for purposes of this section, the estate of
10 a the recipient of medical assistance also includes:

11 (A) Assets assets to be transferred to a beneficiary described in
12 section 77-2004 or 77-2005 in relation to the recipient through a
13 revocable trust or other similar arrangement which has become irrevocable
14 by reason of the recipient's death; and τ

15 (B) Notwithstanding anything to the contrary in subdivision (3) or
16 (4) of section 68-923, assets conveyed or otherwise transferred to a
17 survivor, an heir, an assignee, a beneficiary, or a devisee of the
18 recipient of medical assistance through joint tenancy, tenancy in common,
19 transfer on death deed, survivorship, conveyance of a remainder interest,
20 retention of a life estate or of an estate for a period of time, living
21 trust, or other arrangement by which value or possession is transferred
22 to or realized by the beneficiary of the conveyance or transfer at or as
23 a result of the recipient's death to the full extent authorized in 42
24 U.S.C. 1396p(b)(4)(B). Such other arrangements include insurance policies
25 or annuities in which the recipient of medical assistance had at the time
26 of death any incidents of ownership of the policy or annuity or the power
27 to designate beneficiaries and any pension rights or completed retirement
28 plans or accounts of the recipient. A completed retirement plan or
29 account is one which because of the death of the recipient of medical
30 assistance ceases to have elements of retirement relating to such
31 recipient and under which one or more beneficiaries exist after such

1 recipient's death; and

2 (ii) Estate of a recipient of medical assistance does not include:

3 (A) Insurance policies in proportion to the premiums and other
4 payments to the insurance carrier that were paid by someone other than
5 the recipient of medical assistance or the recipient's spouse;

6 (B) Insurance proceeds and accounts in institutions under federal
7 supervision or supervision of the Department of Banking and Finance or
8 Department of Insurance to the extent subject to a security interest
9 where the secured party is not a related transferee as defined in section
10 12 of this act;

11 (C) Insurance proceeds, any trust account subject to the Burial Pre-
12 Need Sale Act, or any limited lines funeral insurance policy to the
13 extent used to pay for funeral, burial, or cremation expenses of the
14 recipient of medical assistance;

15 (D) Conveyances of real estate made prior to the effective date of
16 this act that are subject to the grantor's retention of a life estate or
17 an estate for a period of time; and

18 (E) Any pension rights or completed retirement plans to the extent
19 that such rights or plans are exempt from claims for reimbursement of
20 medical assistance under federal law.

21 (c) As to any interest in property created after the effective date
22 of this act and for as long as any portion of the debt arising under
23 subsection (1) of this section remains unpaid, the death of the recipient
24 of medical assistance shall not trigger a change in the rights to
25 possession, enjoyment, access, income, or otherwise that the recipient
26 had at the time of death and the personal representative of the
27 recipient's estate is empowered to and shall exercise or enjoy such
28 rights for the purpose of paying such debt, including, but not limited
29 to, renting such property held as a life estate, severing joint
30 tenancies, bringing partition actions, claiming equitable rights of
31 contribution, or taking other actions otherwise appropriate to effect the

1 intent of this section. Such rights shall survive the death of the
2 recipient of medical assistance and shall be administered, marshaled, and
3 disposed of for the purposes of this section. In the event that a claim
4 for reimbursement is made as to some, but not all, nonprobate transferees
5 or assets, the party or owner against whom the claim is asserted may seek
6 equitable contribution toward the claim from the other nonprobate
7 transferees or assets in a court of applicable jurisdiction. Except as
8 otherwise provided in this section and except for the right of the
9 department to recover the debt from such interests in property, this
10 subsection in and of itself does not create any rights in any other
11 person or entity.

12 (d) Unless includable in the estate of a recipient of medical
13 assistance pursuant to this section as it existed prior to the effective
14 date of this act, an interest in real estate transferred to a related
15 transferee as defined in section 12 of this act and vested in such
16 related transferee prior to the effective date of this act shall not be
17 part of the estate of the recipient of medical assistance unless required
18 disclosures were not made at the time of application for medical
19 assistance under section 11 of this act or at the time of any review by
20 the department of the recipient's eligibility for medical assistance.

21 (e) The department, upon application of the personal representative
22 of an estate, any person otherwise authorized under the Nebraska Probate
23 Code to act on behalf of a decedent, any person having an interest in
24 assets of the decedent which are subject to this subsection, a successor
25 trustee of a revocable trust or other similar arrangement which has
26 become irrevocable by reason of the decedent's death, or any other person
27 holding assets of the decedent described in this subsection, shall
28 release some or all of the property of a decedent from the provisions of
29 this subsection in cases in which the department determines that either
30 there is no medical assistance reimbursement due and no application for
31 medical assistance has been filed on behalf of the decedent or that there

1 will be sufficient assets of the probate estate of the decedent to
2 satisfy all such claims for medical assistance reimbursement. If there is
3 no medical assistance reimbursement due and no application for medical
4 assistance has been filed on behalf of the decedent, the department shall
5 certify to the applicant that no reimbursement is due as expeditiously as
6 reasonably possible but in no event more than sixty days after receipt of
7 the application, the decedent's name and social security number, and, if
8 the decedent was predeceased by a spouse, the name and social security
9 number of such spouse. Failure of the department to timely make such
10 certification shall subject the department to payment of the applicant's
11 reasonable attorney's fees and costs in an action for mandamus filed in
12 either Lancaster County or the county in which the probate action or
13 inheritance tax proceeding is pending. The department shall annually
14 report to the Legislature the amount and circumstances of such attorney's
15 fees and costs paid. If the department determines that there is medical
16 assistance reimbursement due or that an application for medical
17 assistance has been filed on behalf of the decedent, the department shall
18 mail notice thereof to the applicant within such sixty-day period. Notice
19 stating that a demand for notice has been filed pursuant to subsection
20 (3) of section 71-605 shall suffice for purposes of the notice
21 requirement. Failure of the department to provide the required notice
22 discharges the debt created under this section unless the department has
23 previously filed a demand for notice under subsection (3) of section
24 71-605. An application under this subdivision shall be provided to the
25 department in a delivery manner and at an address designated by the
26 department, which manner may include email. The department shall post the
27 acceptable manner of delivery on its web site. Any application that fails
28 to conform with such manner is void. The department shall not require, as
29 part of the application, that an applicant submit information beyond what
30 is needed to implement this subdivision. Notwithstanding the lack of an
31 order by a court designating a trustee or successor trustee of a

1 revocable trust or other similar arrangement which has become irrevocable
2 by reason of the decedent's death as a person who may receive information
3 in conjunction with applicable privacy law, such person shall have the
4 authority of a personal representative with respect to the trust assets,
5 including, but not limited to, the authority to seek and to obtain from
6 the department information protected by applicable privacy law, and the
7 department shall release the information requested to the trustee to the
8 extent it is relevant to resolving issues relating to reimbursement of
9 medical assistance or the administration thereof.

10 (f) In the event that the department does not seek to recover
11 medical assistance reimbursement for a period of eighteen months after it
12 is entitled to do so, the county attorney of the county in which the
13 recipient of medical assistance last resided, or in the case of real
14 estate, the county where the real estate is located, may seek the consent
15 of the department to enforce the rights of the department. The department
16 shall determine whether or not to grant such consent within sixty days
17 after the consent is requested. If the department fails to make a
18 determination within the sixty-day period, such consent shall be deemed
19 to have been granted. The department may not unreasonably withhold
20 consent to the bringing of such action. If the county attorney brings
21 such an action, the county shall be entitled to such reasonable
22 attorney's fees as determined by the court with jurisdiction of the
23 action. The department shall give its full cooperation to such county
24 attorney.

25 (g) An action for recovery of the debt created under subsection (1)
26 of this section may be brought by the department against the estate of a
27 recipient of medical assistance as defined in subdivision (4)(b) of this
28 section at any time before five years after the last of the following
29 events:

- 30 (i) The death of the recipient of medical assistance;
31 (ii) The death of the recipient's spouse, if applicable;

1 (iii) The attainment of the age of twenty-one years by the youngest
2 of the recipient's minor children, if applicable; or

3 (iv) A determination that any adult child of the recipient is no
4 longer blind or totally and permanently disabled as defined by the
5 Supplemental Security Income criteria, if applicable.

6 (5) In any probate proceedings in which the department has filed a
7 claim under this section, no additional evidence of foundation shall be
8 required for the admission of the department's payment record supporting
9 its claim if the payment record bears the seal of the department, is
10 certified as a true copy, and bears the signature of an authorized
11 representative of the department.

12 (6) The department may waive or compromise its claim, in whole or in
13 part, if the department determines that enforcement of the claim would
14 not be in the best interests of the state or would result in undue
15 hardship as provided in rules and regulations of the department.

16 (7) Whenever the department has provided medical assistance because
17 of sickness or injury to any person resulting from a third party's
18 wrongful act or negligence and the person has recovered or may recover
19 damages from such third party, to the fullest extent permitted by federal
20 law and understandings entered into between the state and federal
21 government, the department shall have the right to recover the medical
22 assistance it paid from any amounts that the person has received or may
23 receive from or on behalf of the third party. When, with the consent of
24 the department, an action or claim is brought by the person alone and the
25 person incurs or will incur a personal liability to pay attorney's fees
26 and costs of litigation or costs incurred in pursuit of a claim, to the
27 fullest extent permitted by federal law and understandings entered into
28 between the state and federal government, the department's claim for
29 reimbursement of the medical assistance provided to the person shall be
30 reduced by twenty-five percent of the full amount of the judgment, award,
31 or settlement, which the person may retain, though otherwise subject to

1 applicable law including but not limited to eligibility criteria, and a
2 pro rata share that represents the department's reasonable share of
3 attorney's fees paid by the person and that portion of the costs of
4 litigation or the costs incurred in pursuit of a claim determined by
5 multiplying the amount of the costs of litigation or the costs incurred
6 in pursuit of a claim by the ratio of the full amount of benefit
7 expenditures made by the department to or on behalf of the person to the
8 full amount of the judgment, award, or settlement. The department may not
9 unreasonably withhold consent to the bringing of such action or claim.
10 The department shall determine whether or not to grant such consent
11 within thirty days after the consent is requested. If the department
12 fails to make a determination within the thirty-day period, such consent
13 shall be deemed to have been granted.

14 (8) The department may adopt and promulgate rules and regulations to
15 carry out this section.

16 Sec. 15. Section 71-605, Revised Statutes Cumulative Supplement,
17 2016, is amended to read:

18 71-605 (1) The funeral director and embalmer in charge of the
19 funeral of any person dying in the State of Nebraska shall cause a
20 certificate of death to be filled out with all the particulars contained
21 in the standard form adopted and promulgated by the department. Such
22 standard form shall include a space for veteran status and the period of
23 service in the armed forces of the United States and a statement of the
24 cause of death made by a person holding a valid license as a physician,
25 physician assistant, or nurse practitioner who last attended the
26 deceased. The standard form shall also include the deceased's social
27 security number and a notice that, pursuant to section 30-2413, demands
28 for notice which may affect the estate of the deceased are filed with the
29 county court in the county where the decedent resided at the time of
30 death. Death and fetal death certificates shall be completed by the
31 funeral directors and embalmers and physicians, physician assistants, or

1 nurse practitioners for the purpose of filing with the department and
2 providing child support enforcement information pursuant to section
3 43-3340.

4 (2) The physician, physician assistant, or nurse practitioner shall
5 have the responsibility and duty to complete and sign by electronic means
6 pursuant to section 71-603.01, within twenty-four hours from the time of
7 death, that part of the certificate of death entitled medical certificate
8 of death. In the case of a death when no person licensed as a physician,
9 physician assistant, or nurse practitioner was in attendance, the funeral
10 director and embalmer shall refer the case to the county attorney who
11 shall have the responsibility and duty to complete and sign the death
12 certificate by electronic means pursuant to section 71-603.01.

13 No cause of death shall be certified in the case of the sudden and
14 unexpected death of a child between the ages of one week and three years
15 until an autopsy is performed at county expense by a qualified
16 pathologist pursuant to section 23-1824. The parents or guardian shall be
17 notified of the results of the autopsy by their physician, physician
18 assistant, nurse practitioner, community health official, or county
19 coroner within forty-eight hours. The term sudden infant death syndrome
20 shall be entered on the death certificate as the principal cause of death
21 when the term is appropriately descriptive of the pathology findings and
22 circumstances surrounding the death of a child.

23 If the circumstances show it possible that death was caused by
24 neglect, violence, or any unlawful means, the case shall be referred to
25 the county attorney for investigation and certification. The county
26 attorney shall, within twenty-four hours after taking charge of the case,
27 state the cause of death as ascertained, giving as far as possible the
28 means or instrument which produced the death. All death certificates
29 shall show clearly the cause, disease, or sequence of causes ending in
30 death. If the cause of death cannot be determined within the period of
31 time stated above, the death certificate shall be filed to establish the

1 fact of death. As soon as possible thereafter, and not more than six
2 weeks later, supplemental information as to the cause, disease, or
3 sequence of causes ending in death shall be filed with the department to
4 complete the record. For all certificates stated in terms that are
5 indefinite, insufficient, or unsatisfactory for classification, inquiry
6 shall be made to the person completing the certificate to secure the
7 necessary information to correct or complete the record.

8 (3) A completed death certificate shall be filed with the department
9 within five business days after the date of death. If it is impossible to
10 complete the certificate of death within five business days, the funeral
11 director and embalmer shall notify the department of the reason for the
12 delay and file the certificate as soon as possible. Within ten days after
13 the filing of the certificate of death and prior to the issuance of any
14 certified copies of the certificate of death, the department shall search
15 its records to determine if the deceased had applied for or received
16 medical assistance under the Medical Assistance Act. If the deceased made
17 such application or received such assistance, the department shall,
18 before or contemporaneously with the issuance of the first certified copy
19 of the certificate of death, file a demand for notice pursuant to section
20 30-2413 in the county court of the county in which the decedent was
21 domiciled at the time of death. The department shall annually report the
22 following to the Legislature:

23 (a) The number of demands for notice filed pursuant to this section;
24 and

25 (b) The number of times in the prior year that the time between a
26 request for a certified copy of the certificate of death and the mailing
27 of such certificate exceeded twenty-one days.

28 (4) Before any dead human body may be cremated, a cremation permit
29 shall first be signed electronically by the county attorney, or by his or
30 her authorized representative as designated by the county attorney in
31 writing, of the county in which the death occurred on an electronic form

1 prescribed and furnished by the department.

2 (5) A permit for disinterment shall be required prior to
3 disinterment of a dead human body. The permit shall be issued by the
4 department to a licensed funeral director and embalmer upon proper
5 application. The request for disinterment shall be made by the person
6 listed in section 30-2223 or a county attorney on a form furnished by the
7 department. The application shall be signed by the funeral director and
8 embalmer who will be directly supervising the disinterment. When the
9 disinterment occurs, the funeral director and embalmer shall sign the
10 permit giving the date of disinterment and file the permit with the
11 department within ten days of the disinterment.

12 (6) When a request is made under subsection (5) of this section for
13 the disinterment of more than one dead human body, an order from a court
14 of competent jurisdiction shall be submitted to the department prior to
15 the issuance of a permit for disinterment. The order shall include, but
16 not be limited to, the number of bodies to be disinterred if that number
17 can be ascertained, the method and details of transportation of the
18 disinterred bodies, the place of reinterment, and the reason for
19 disinterment. No sexton or other person in charge of a cemetery shall
20 allow the disinterment of a body without first receiving from the
21 department a disinterment permit properly completed.

22 (7) No dead human body shall be removed from the state for final
23 disposition without a transit permit issued by the funeral director and
24 embalmer having charge of the body in Nebraska, except that when the
25 death is subject to investigation, the transit permit shall not be issued
26 by the funeral director and embalmer without authorization of the county
27 attorney of the county in which the death occurred. No agent of any
28 transportation company shall allow the shipment of any body without the
29 properly completed transit permit prepared in duplicate.

30 (8) The interment, disinterment, or reinterment of a dead human body
31 shall be performed under the direct supervision of a licensed funeral

1 director and embalmer, except that hospital disposition may be made of
2 the remains of a child born dead pursuant to section 71-20,121.

3 (9) All transit permits issued in accordance with the law of the
4 place where the death occurred in a state other than Nebraska shall be
5 signed by the funeral director and embalmer in charge of burial and
6 forwarded to the department within five business days after the interment
7 takes place.

8 Sec. 16. Section 77-2018.02, Revised Statutes Cumulative Supplement,
9 2016, is amended to read:

10 77-2018.02 (1) In the absence of any proceeding brought under
11 Chapter 30, article 24 or 25, in this state, proceedings for the
12 determination of the tax may be instituted in the county court of the
13 county where the property or any part thereof which might be subject to
14 tax is situated.

15 (2) Upon the filing of the petition referred to in subsection (1) of
16 this section, the county court shall order the petition set for hearing,
17 not less than two nor more than four weeks after the date of filing the
18 petition, and shall cause notice thereof to be given to all persons
19 interested in the estate of the deceased and the property described in
20 the petition, except as provided in subsections (4) and (5) of this
21 section, in the manner provided for in subsection (3) of this section.

22 (3) The notice, provided for by subsection (2) of this section,
23 shall be given by one publication in a legal newspaper of the county or,
24 in the absence of such legal newspaper, then in a legal newspaper of some
25 adjoining county of general circulation in the county. In addition to
26 such publication of notice, personal service of notice of the hearing
27 shall be had upon the county attorney of each county in which the
28 property described in the petition is located, at least one week prior to
29 the hearing.

30 (4) If it appears to the county court, upon the filing of the
31 petition, by any person other than the county attorney, that no

1 assessment of inheritance tax could result, it shall forthwith enter
2 thereon an order directing the county attorney to show cause, within one
3 week from the service thereof, why determination should not be made that
4 no inheritance tax is due on account of the property described in the
5 petition and the potential lien thereof on such property extinguished.
6 Upon service of such order to show cause and failure of such showing by
7 the county attorney, notice of such hearing by publication shall be
8 dispensed with, and the petitioner shall be entitled without delay to a
9 determination of no tax due on account of the property described in the
10 petition, and any potential lien shall be extinguished.

11 (5) If it appears to the county court that (a) the county attorney
12 of each county in which the property described in the petition is located
13 has executed a waiver of notice upon him or her to show cause, or of the
14 time and place of hearing, and has entered a voluntary appearance in such
15 proceeding in behalf of the county and the State of Nebraska, and (b)
16 either (i) all persons against whom an inheritance tax may be assessed
17 are either a petitioner or have executed a waiver of notice upon them to
18 show cause, or of the time and place of hearing, and have entered a
19 voluntary appearance, or (ii) a party to the proceeding has agreed to pay
20 to the proper counties the full inheritance tax so determined, the court
21 may dispense with the notice provided for in subsections (2) and (3) of
22 this section and proceed without delay to make a determination of
23 inheritance tax, if any, due on account of the property described in the
24 petition.

25 (6) If the decedent was fifty-five years of age or older or resided
26 in a medical institution as defined in subsection (1) of section 68-919,
27 a notice of the filing of the petition referred to in subsection (1) of
28 this section shall be provided ~~mailed~~ to the Department of Health and
29 Human Services with the decedent's social security number and, if the
30 decedent was predeceased by a spouse available ~~upon reasonable~~
31 ~~investigation~~, the name and social security number of ~~the decedent's~~

1 ~~spouse if such spouse is deceased.~~ A certificate of the providing mailing
2 of the notice to the department shall be filed in the inheritance tax
3 proceedings by an attorney for the petitioner or, if there is no
4 attorney, by the petitioner, prior to the entry of an order pursuant to
5 this section. The notice shall be provided to the department in a
6 delivery manner and at an address designated by the department, which
7 manner may include email. The department shall post the acceptable manner
8 of delivering notice on its web site. Any notice that fails to conform
9 with such manner is void and constitutes neither notice to the department
10 nor a waiver application for purposes of any statute or regulation that
11 requires that a notice or waiver application be provided to the
12 department.

13 Sec. 17. Section 77-3903, Revised Statutes Cumulative Supplement,
14 2016, is amended to read:

15 77-3903 (1)(a) A notice of lien provided for in the Uniform State
16 Tax Lien Registration and Enforcement Act upon real property shall be
17 presented in the office of the Secretary of State. Such notice of lien
18 shall be transmitted by the Secretary of State to and filed in the office
19 of the register of deeds by the register of deeds of the county or
20 counties in which the real property subject to the lien is situated as
21 designated in the notice of lien. The register of deeds shall enter the
22 notice in the alphabetical state tax lien index, showing on one line the
23 name and residence of the person liable named in such notice, the last
24 four digits of the social security number or the federal tax
25 identification number of such person, the Tax Commissioner's or
26 Commissioner of Labor's serial number of such notice, the date and hour
27 of filing, and the amount due. Such presentments to the Secretary of
28 State may be made by direct input to the Secretary of State's data base
29 or by other electronic means. All such notices of lien shall be retained
30 in numerical order in a file designated state tax lien notices, except
31 that in offices filing by the roll form of microfilm pursuant to section

1 23-1517.01, the original notices need not be retained. A lien subject to
2 this subsection shall be effective upon real property when filed by the
3 register of deeds as provided in this subsection.

4 (b) A notice of lien provided for in the Uniform State Tax Lien
5 Registration and Enforcement Act upon personal property shall be filed in
6 the office of the Secretary of State. The Secretary of State shall enter
7 the notice in the state's central tax lien index, showing on one line the
8 name and residence of the person liable named in such notice, the last
9 four digits of the social security number or the federal tax
10 identification number of such person, the Tax Commissioner's or
11 Commissioner of Labor's serial number of such notice, the date and hour
12 of filing, and the amount due. Such filings with the Secretary of State
13 may be filed by direct input to the Secretary of State's data base or by
14 other electronic means. All such notices of lien shall be retained in
15 numerical order in a file designated state tax lien notices.

16 ~~(2) (2)(a) This subdivision applies until January 1, 2018.~~ The
17 uniform fee, payable to the Secretary of State, for presenting for
18 filing, releasing, continuing, or subordinating or for filing, releasing,
19 continuing, or subordinating each tax lien pursuant to the Uniform State
20 Tax Lien Registration and Enforcement Act shall be two times the fee
21 required for recording instruments with the register of deeds as provided
22 in section 33-109. There shall be no fee for the filing of a termination
23 statement. The uniform fee for each county more than one designated
24 pursuant to subdivision (1)(a) of this section shall be the fee required
25 for recording instruments with the register of deeds as provided in
26 section 33-109. The Secretary of State shall deposit each fee received
27 pursuant to this subsection ~~subdivision~~ in the Uniform Commercial Code
28 Cash Fund. Of the fees received and deposited pursuant to this subsection
29 ~~subdivision~~, the Secretary of State shall remit the fee required for
30 recording instruments with the register of deeds as provided in section
31 33-109 to the register of deeds of a county for each designation of such

1 county in a filing pursuant to subdivision (1)(a) of this section.

2 ~~(b) This subdivision applies on and after January 1, 2018. The~~
3 ~~uniform fee, payable to the Secretary of State, for presenting for~~
4 ~~filing, releasing, continuing, or subordinating or for filing, releasing,~~
5 ~~continuing, or subordinating each tax lien pursuant to the Uniform State~~
6 ~~Tax Lien Registration and Enforcement Act shall be six dollars. There~~
7 ~~shall be no fee for the filing of a termination statement. The uniform~~
8 ~~fee for each county more than one designated pursuant to subdivision (1)~~
9 ~~(a) of this section shall be three dollars. The Secretary of State shall~~
10 ~~deposit each fee received pursuant to this subdivision in the Uniform~~
11 ~~Commercial Code Cash Fund. Of the fees received and deposited pursuant to~~
12 ~~this subdivision, the Secretary of State shall remit three dollars to the~~
13 ~~register of deeds of a county for each designation of such county in a~~
14 ~~filing pursuant to subdivision (1)(a) of this section.~~

15 (3) The Secretary of State shall bill the Tax Commissioner or
16 Commissioner of Labor on a monthly basis for fees for documents presented
17 to or filed with the Secretary of State. No payment of any fee shall be
18 required at the time of presenting or filing any such lien document.

19 Sec. 18. If any section in this act or any part of any section is
20 declared invalid or unconstitutional, the declaration shall not affect
21 the validity or constitutionality of the remaining portions.

22 Sec. 19. Original sections 24-517, 25-2154, 30-2483, 30-3880,
23 30-3881, 30-3882, 33-109, and 44-371, Reissue Revised Statutes of
24 Nebraska, and sections 52-1004, 68-901, 68-919, 71-605, 77-2018.02, and
25 77-3903, Revised Statutes Cumulative Supplement, 2016, are repealed.