

LEGISLATIVE BILL 966

Approved by the Governor August 15, 2020

Introduced by DeBoer, 10; Hansen, M., 26.

A BILL FOR AN ACT relating to law; to amend sections 30-2414, 30-2416, 30-2426, 71-601, and 76-3413, Reissue Revised Statutes of Nebraska, and section 30-2201, Revised Statutes Cumulative Supplement, 2018; to adopt the Uniform Wills Recognition Act (1977); to change Nebraska Probate Code provisions relating to individuals who are related to a decedent through two lines of relationship, parents who are barred from inheriting from a child, allowable will provisions, informal probate and appointment proceedings, and formal testacy or appointment proceedings; to provide for an acknowledgment of maternity and paternity as prescribed; to change provisions relating to the revocation of transfer on death deeds under the Nebraska Uniform Real Property Transfer on Death Act; to harmonize provisions; and to repeal the original sections.

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

Section 1. Sections 1 to 9 of this act shall be known and may be cited as the Uniform Wills Recognition Act (1977).

In the Uniform Wills Recognition Act (1977):

(1) International will means a will executed in conformity with sections 2 to 5 of this act; and

(2) Authorized person and person authorized to act in connection with international wills mean a person who by section 9 of this act, or by the laws of the United States including members of the diplomatic and consular service of the United States designated by Foreign Service Regulations, is empowered to supervise the execution of international wills.

Sec. 2. (a) A will is valid as regards form, irrespective particularly of the place where it is made, of the location of the assets, and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of the Uniform Wills Recognition Act (1977).

(b) The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

(c) The Uniform Wills Recognition Act (1977) shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Sec. 3. (a) The will shall be made in writing. It need not be written by the testator personally. It may be written in any language, by hand or by any other means.

(b) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is the testator's will and that the testator knows the contents thereof. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

(c) In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if the testator has previously signed it, shall acknowledge the testator's signature.

(d) When the testator is unable to sign, the absence of the testator's signature does not affect the validity of the international will if the testator indicates the reason for the testator's inability to sign and the authorized person makes note thereof on the will. In these cases, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator's name for the testator, if the authorized person makes note of this also on the will, but it is not required that any person sign the testator's name for the testator.

(e) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Sec. 4. (a) The signatures shall be placed at the end of the will. If the will consists of several sheets, each sheet will be signed by the testator or, if the testator is unable to sign, by the person signing on the testator's behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

(b) The date of the will shall be the date of its signature by the authorized person. That date shall be noted at the end of the will by the authorized person.

(c) The authorized person shall ask the testator whether the testator wishes to make a declaration concerning the safekeeping of the testator's will. If so and at the express request of the testator, the place where the testator intends to have the testator's will kept shall be mentioned in the certificate provided for in section 5 of this act.

(d) A will executed in compliance with section 3 of this act is not invalid merely because it does not comply with this section.

Sec. 5. The authorized person shall attach to the will a certificate to be signed by the authorized person establishing that the requirements of the Uniform Wills Recognition Act (1977) for valid execution of an international

will have been complied with. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate shall be substantially in the following form:

CERTIFICATE

(Convention of October 26, 1973)

1. I, (name, address, and capacity), a person authorized to act in connection with international wills

2. Certify that on (date) at (place)

3. (testator) (name, address, date, and place of birth) in my presence and that of the witnesses

4. (a) (name, address, date, and place of birth)

(b) (name, address, date, and place of birth)

has declared that the attached document is the testator's will and that the testator knows the contents thereof.

5. I furthermore certify that:

6. (a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged the testator's signature previously affixed.

*(2) following a declaration of the testator stating that the testator was unable to sign the testator's will for the following reason, and I have mentioned this declaration on the will

*and the signature has been affixed by (name, address)

7. (b) the witnesses and I have signed the will;

8. *(c) each page of the will has been signed by and numbered;

9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

11. *(f) the testator has requested me to include the following statement concerning the safekeeping of the testator's will:

.....

12. PLACE

13. DATE

14. SIGNATURE

and, if necessary, SEAL

*to be completed if appropriate

Sec. 6. In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under the Uniform Wills Recognition Act (1977). The absence or irregularity of a certificate shall not affect the formal validity of a will under the act.

Sec. 7. The international will shall be subject to the ordinary rules of revocation of wills.

Sec. 8. Sections 1 to 7 of this act derive from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying the Uniform Wills Recognition Act (1977), regard shall be had to its international origin and to the need for uniformity in its interpretation.

Sec. 9. Individuals who have been admitted to practice law before the courts of this state and who are in good standing as active law practitioners in this state, are hereby declared to be authorized persons in relation to international wills.

Sec. 10. Section 30-2201, Revised Statutes Cumulative Supplement, 2018, is amended to read:

30-2201 Sections 30-401 to 30-406, 30-701 to 30-713, 30-2201 to 30-2902, 30-3901 to 30-3923, 30-4001 to 30-4045, and 30-4201 to 30-4210, sections 11 to 13 of this act, and the Public Guardianship Act shall be known and may be cited as the Nebraska Probate Code.

Sec. 11. An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

Sec. 12. (a) A parent is barred from inheriting from or through a child of the parent if the parent's parental rights were terminated and the parent-child relationship was not judicially reestablished.

(b) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

Sec. 13. A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death.

Sec. 14. Section 30-2414, Reissue Revised Statutes of Nebraska, is amended to read:

30-2414 Applications for informal probate or informal appointment shall be directed to the registrar and verified by the applicant to be accurate and complete to the best of the applicant's his knowledge and belief as to the following information:

(1) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:

- (i) a statement of the interest of the applicant;
- (ii) the name and date of death of the decedent, the decedent's ~~his~~ age, and the county and state of ~~his~~ domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;
- (iii) if the decedent was not domiciled in the state at the time of ~~his~~ death, a statement showing venue;
- (iv) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;
- (v) a statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

(2) An application for informal probate of a will shall state the following in addition to the statements required by subdivision (1) of this section:

(i) that the original of the decedent's last will or an authenticated copy of a will probated in another jurisdiction:

- (A) is in the possession of the court; ~~or~~
- (B) accompanies the application; ~~or~~ ~~that an authenticated copy of a will probated in another jurisdiction accompanies the application~~;

(C) is in the possession of the applicant, that the applicant will deliver such original or authenticated copy to the court within ten days after the filing of the application, and that a true and accurate copy of such original or authenticated copy accompanies the application;

- (ii) that the applicant, to the best of the applicant's ~~his~~ knowledge, believes the will to have been validly executed; and
- (iii) that after the exercise of reasonable diligence the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will.

(3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.

(4) An application for informal appointment of an administrator in intestacy shall state, in addition to the statements required by subdivision (1) of this section:

- (i) that after the exercise of reasonable diligence the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under section 30-2210, or a statement why any such instrument of which the applicant ~~he~~ may be aware is not being probated;
- (ii) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 30-2412.

(5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in subsection (c) of section 30-2453 ~~section 30-2453(c)~~, or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

Sec. 15. Section 30-2416, Reissue Revised Statutes of Nebraska, is amended to read:

30-2416 (a) In an informal proceeding for original probate of a will, the registrar shall determine whether:

- (1) the application is complete;
- (2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's ~~his~~ knowledge and belief;
- (3) the applicant appears from the application to be an interested person as defined in subdivision (21) of section 30-2209 ~~section 30-2209(21)~~;
- (4) on the basis of the statements in the application, venue is proper;
- (5) either:
 - (i) an original, duly executed, and apparently unrevoked will is in the registrar's possession; ~~or~~ ~~and~~
 - (ii) the applicant has represented that an original, duly executed, and apparently unrevoked will is in the applicant's possession, the applicant has provided a true and accurate copy of such original will with the application,

and the applicant has represented that the original, duly executed, and apparently unrevoked will will be delivered to the court within ten days after the filing of the application; and

(6) any notice required by section 30-2413 has been given and that the application is not within section 30-2417.

(b) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (d) of this section below, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(c) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under section 30-2327, 30-2328, or 30-2331 have been met shall be probated without further proof. In other cases, the registrar may assume execution if the will appears to have been properly executed, or the registrar he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(d) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(e) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (a) of this section above may be probated in this state upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

Sec. 16. Section 30-2426, Reissue Revised Statutes of Nebraska, is amended to read:

30-2426 (a) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing and contain further statements as indicated in this section. A petition for formal probate of a will

(1) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs,

(2) contains the statements required for informal applications as stated in subdivisions (1)(i) through (v) of section 30-2414 ~~the five subparagraphs under section 30-2414(1)~~, the statements required by subdivisions (2)(ii) subparagraphs (ii) and (iii) of section 30-2414 ~~30-2414(2)~~, and

(3) states whether the original of the last will of the decedent is in the possession of the court, or accompanies the petition, or has been filed electronically and will be delivered to the court within ten days after the filing of the application.

~~The If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable if the original will or an authenticated copy of the will probated in another jurisdiction: -~~

~~(i) is not in the possession of the court;
(ii) did not accompany the application; and
(iii) has not been filed electronically, subject to delivery within ten days after the filing of the application.~~

(b) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by subdivisions (1) and (4) of section 30-2414 and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case the statements required by subdivision (4)(ii) subparagraph (ii) of section 30-2414 ~~30-2414(4)~~ above may be omitted.

Sec. 17. Section 71-601, Reissue Revised Statutes of Nebraska, is amended to read:

71-601 Sections 71-601 to 71-649 and section 18 of this act shall be known and may be cited as the Vital Statistics Act.

Sec. 18. (1) For purposes of this section:

(a) Biological mother means a person who is related to a child as the source of the egg that resulted in the conception of the child; and

(b) Birth mother means the person who gave birth to the child.

(2) During the period immediately before or after the in-hospital birth of a child whose biological mother is not the same as the birth mother, the person in charge of such hospital or such person's designated representative shall provide to the child's biological mother and birth mother the documents and written instructions for such biological mother and birth mother to complete a notarized acknowledgment of maternity. Such acknowledgment, if signed by both parties and notarized, shall be filed with the department at the same time at which the certificate of live birth is filed.

(3) Nothing in this section shall be deemed to require the person in charge of such hospital or such person's designee to seek out or otherwise locate an alleged mother who is not readily identifiable or available.

(4) The acknowledgment shall be executed on a form prepared by the department. Such form shall be in essentially the same form provided by the

department. The acknowledgment shall include, but not be limited to, (a) a statement by the birth mother consenting to the acknowledgment of maternity and a statement that the biological mother is the legal mother of the child, (b) a statement by the biological mother that she is the biological mother of the child, (c) written information regarding parental rights and responsibilities, and (d) the social security numbers of the mothers.

(5) The form provided for in subsection (4) of this section shall also contain instructions for completion and filing with the department if it is not completed and filed with a birth certificate as provided in subsection (2) of this section.

(6) The department shall accept completed acknowledgment forms. The department may prepare photographic, electronic, or other reproductions of acknowledgments. Such reproductions, when certified and approved by the department, shall be accepted as the original records, and the documents from which permanent reproductions have been made may be disposed of as provided by rules and regulations of the department.

(7) The department shall enter on the birth certificate of any child described in subsection (2) of this section the name of the biological mother of the child upon receipt of an acknowledgment of maternity as provided in this section signed by the biological mother of the child and the birth mother of the child. The name of the birth mother shall not be entered on the birth certificate. If the birth mother is married, the name of the birth mother's spouse shall not be entered on the birth certificate unless paternity for such spouse is otherwise established by law.

(8)(a) The signing of a notarized acknowledgment of maternity, whether under this section or otherwise, by the biological mother shall create a rebuttable presumption of maternity as against the biological mother. The signed, notarized acknowledgment is subject to the right of any signatory to rescind the acknowledgment at any time prior to the earlier of:

(i) Sixty days after the acknowledgment; or

(ii) The date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a support order in which the signatory is a party.

(b) After the rescission period provided for in subdivision (8)(a) of this section, a signed, notarized acknowledgment is considered a legal finding which may be challenged only on the basis of fraud, duress, or material mistake of fact with the burden of proof upon the challenger, and the legal responsibilities, including the child support obligation, of any signatory arising from the acknowledgment shall not be suspended during the challenge, except for good cause shown. Such a signed and notarized acknowledgment or a certified copy or certified reproduction thereof shall be admissible in evidence in any proceeding to establish support.

(9)(a) If the biological mother was married at the time of either conception or birth or at any time between conception and birth of a child described in subsection (2) of this section, the name of the biological mother's spouse shall be entered on the certificate as the other parent of the child unless:

(i) Paternity has been determined otherwise by a court of competent jurisdiction;

(ii) The biological mother and the biological mother's spouse execute affidavits attesting that the biological mother's spouse is not the biological parent of the child, in which case information about the other parent shall be omitted from the certificate; or

(iii) The biological mother executes an affidavit attesting that her spouse is not the biological father and naming the biological father; the biological father executes an affidavit attesting that he is the biological father; and the biological mother's spouse executes an affidavit attesting that such spouse is not the biological parent of the child. In such case the biological father shall be shown as the other parent on the certificate.

(b) For affidavits executed under subdivision (8)(a)(ii) or (iii) of this section, each signature shall be individually notarized.

(10) If the biological mother was not married at the time of either conception or birth or at any time between conception and birth, the name of the biological father shall not be entered on the certificate as the other parent without the written consent of the biological mother and the person named as the biological father.

(11) In any case in which paternity of a child is determined by a court of competent jurisdiction, the name of the adjudicated father shall be entered on the certificate as the other parent in accordance with the finding of the court.

(12) If the other parent is not named on the certificate, no other information about the other parent shall be entered thereon.

(13) The identification of the father as provided in this section shall not be deemed to affect the legitimacy of the child or the duty to support as set forth in sections 42-377 and 43-1401 to 43-1418.

(14) The department may adopt and promulgate rules and regulations as necessary and proper to assist it in the implementation and administration of this section and to establish a nominal payment and procedure for payment for each acknowledgment filed with the department.

Sec. 19. Section 76-3413, Reissue Revised Statutes of Nebraska, is amended to read:

76-3413 (a) Subject to subsection (b) of this section, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only

if the instrument:

(1) Is one of the following:

(A) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(B) An instrument of revocation that expressly revokes the deed or part of the deed and that is executed with the same formalities as required in section 76-3409; ~~or~~

(C) An inter vivos deed that expressly or by inconsistency revokes the transfer on death deed or part of the deed; ~~or and~~

(D) An inter vivos deed to a bona fide purchaser that expressly or by inconsistency revokes the transfer on death deed or part of the deed; and

(2) Is an instrument under subdivisions (1)(A), (B), and (C) of this subsection that is ~~is~~ acknowledged by the transferor after the acknowledgment of the deed being revoked and is recorded ~~(i) within thirty days after being executed, (ii) before the transferor's death. For any instrument under subdivision (1)(D) of this subsection, such instrument must be acknowledged by the transferor after the acknowledgment of the deed being revoked and must be recorded before the later of thirty days after being executed or the transferor's death. Any instrument under this subsection shall be recorded~~ ~~and (iii) in the public records in the office of the register of deeds of the county where the deed being revoked is recorded.~~

(b) If a transfer on death deed is made by more than one transferor:

(1) Revocation by a transferor does not affect the deed as to the interest of another transferor; and

(2) A deed of joint owners is revoked only if it is revoked by all of the living joint owners who were transferors.

(c) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

(d) This section does not limit the effect of an inter vivos transfer of the property.

(e) A bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim.

Sec. 20. Original sections 30-2414, 30-2416, 30-2426, 71-601, and 76-3413, Reissue Revised Statutes of Nebraska, and section 30-2201, Revised Statutes Cumulative Supplement, 2018, are repealed.