

AMENDMENTS TO LB 157

Introduced by Coash

1           1. Strike the original sections and insert the following  
2 new sections:

3           Section 1. Section 25-2708, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           25-2708 In any proceeding in the county court involving  
6 (1) the probate of wills, (2) the administration of estates, (3)  
7 the determination of heirs, (4) the determination of inheritance  
8 tax, (5) guardianships, (6) conservatorships, where real estate  
9 is any part of the assets of the estate or proceeding, or (7)  
10 trusts, where real estate is specifically described as an asset of  
11 the trust, the county judge before whom the proceeding is pending  
12 shall issue a certificate which shall be filed with the register  
13 of deeds of the county in which the real estate is located within  
14 ten days after the description of the real estate is filed in the  
15 proceeding. A guardian or conservator shall file a copy of his or  
16 her letters with the register of deeds in every county in which  
17 the ward has real property or an interest in real property. The  
18 certificate shall be in the following form:

19           This is to certify that there is pending in the  
20 county court of ..... County, a proceeding  
21 .....

22           (describe proceeding and name of person involved)

23           in which the following described real estate is involved,

1 to wit:

2 .....

3 (describe real estate)

4 .....

5 County Judge

6 Sec. 2. Section 25-2911, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 25-2911 (1) The following types of cases may be accepted  
9 for dispute resolution at an approved center:

10 (a) Civil claims and disputes, including, but not limited  
11 to, consumer and commercial complaints, disputes between neighbors,  
12 disputes between business associates, disputes between landlords  
13 and tenants, and disputes within communities;

14 (b) Disputes concerning child custody, parenting time,  
15 visitation, or other access and other areas of domestic relations;  
16 and

17 (c) Juvenile offenses and disputes involving juveniles;  
18 and-

19 (d) Contested guardianship and contested conservatorship  
20 proceedings.

21 (2) An approved center may accept cases referred by a  
22 court, an attorney, a law enforcement officer, a social service  
23 agency, a school, or any other interested person or agency or  
24 upon the request of the parties involved. A case may be referred  
25 prior to the commencement of formal judicial proceedings or may be  
26 referred as a pending court case. In order for a referral to be  
27 effective, all parties involved must consent to such referral. If a

1 court refers a case to an approved center, the center shall provide  
2 information to the court as to whether an agreement was reached.  
3 If the court requests a copy of the agreement, the center shall  
4 provide it.

5 Sec. 3. Section 25-2943, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 25-2943 A court may refer a civil case, including a  
8 contested guardianship or contested conservatorship proceeding, to  
9 mediation or another form of alternative dispute resolution and,  
10 unless otherwise ordered following a hearing upon a motion to  
11 object to such referral, may state a date for the case to return  
12 to court. Such date shall be no longer than ninety days after the  
13 date the order was signed unless the court grants an extension  
14 upon request of the parties. Any agreement or resolution made  
15 in mediation or another form of alternative dispute resolution  
16 shall be voluntarily entered into by the parties. An individual  
17 trial court, an appellate court, or the Supreme Court on its own  
18 initiative may adopt rules of practice governing the procedures  
19 for referral of cases to mediation and other forms of dispute  
20 resolution. Such services may be provided by approved centers on a  
21 sliding scale of fees under the Dispute Resolution Act.

22 Sec. 4. Section 30-1601, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 30-1601 (1) In all matters arising under the Nebraska  
25 Probate Code and in all matters in county court arising under the  
26 Nebraska Uniform Trust Code, appeals may be taken to the Court of  
27 Appeals in the same manner as an appeal from district court to the

1 Court of Appeals.

2 (2) An appeal may be taken by any party and may also be  
3 taken by any person against whom the final judgment or final order  
4 may be made or who may be affected thereby.

5 (3) When the appeal is by someone other than a personal  
6 representative, conservator, trustee, guardian, or guardian ad  
7 litem, the appealing party shall, within thirty days after the  
8 entry of the judgment or final order complained of, deposit with  
9 the clerk of the county court a supersedeas bond or undertaking  
10 in such sum as the court shall direct, with at least one good  
11 and sufficient surety approved by the court, conditioned that the  
12 appellant will satisfy any judgment and costs that may be adjudged  
13 against him or her, including costs under subsection (6) of this  
14 section, unless the court directs that no bond or undertaking need  
15 be deposited. If an appellant fails to comply with this subsection,  
16 the Court of Appeals on motion and notice may take such action,  
17 including dismissal of the appeal, as is just.

18 (4) The appeal shall be a supersedeas for the matter  
19 from which the appeal is specifically taken, but not for any other  
20 matter. In appeals pursuant to sections 30-2601 to 30-2661, upon  
21 motion of any party to the action, the county court may remove  
22 the supersedeas or require the appealing party to deposit with the  
23 clerk of the county court a bond or other security approved by  
24 the court in an amount and conditioned in accordance with sections  
25 30-2640 and 30-2641. Once the appeal is perfected, the court having  
26 jurisdiction over the appeal may, upon motion of any party to the  
27 action, reimpose or remove the supersedeas or require the appealing

1 party to deposit with the clerk of the court a bond or other  
2 security approved by the court in an amount and conditioned in  
3 accordance with sections 30-2640 and 30-2641. Upon motion of any  
4 interested ~~party~~ person or upon the court's own motion, the county  
5 court may appoint a special guardian or conservator pending appeal  
6 despite any supersedeas order.

7 (5) The judgment of the Court of Appeals shall not vacate  
8 the judgment in the county court. The judgment of the Court of  
9 Appeals shall be certified without cost to the county court for  
10 further proceedings consistent with the determination of the Court  
11 of Appeals.

12 (6) If it appears to the Court of Appeals that an appeal  
13 was taken vexatiously or for delay, the court shall adjudge that  
14 the appellant shall pay the cost thereof, including an attorney's  
15 fee, to the adverse party in an amount fixed by the Court of  
16 Appeals, and any bond required under subsection (3) of this section  
17 shall be liable for the costs.

18 Sec. 5. Sections 5 to 27 of this act shall be known  
19 and may be cited as the Nebraska Uniform Adult Guardianship and  
20 Protective Proceedings Jurisdiction Act.

21 Sec. 6. In the Nebraska Uniform Adult Guardianship and  
22 Protective Proceedings Jurisdiction Act:

23 (1) Adult means an individual who has attained eighteen  
24 years of age;

25 (2) Conservator means a person appointed by the court to  
26 administer the property of an adult, including a person appointed  
27 under the Nebraska Probate Code for an adult;

1           (3) Guardian means a person appointed by the court to  
2 make decisions regarding the person of an adult, including a person  
3 appointed under the Nebraska Probate Code for an adult;

4           (4) Guardianship order means an order appointing a  
5 guardian;

6           (5) Guardianship proceeding means a judicial proceeding  
7 in which an order for the appointment of a guardian is sought or  
8 has been issued;

9           (6) Incapacitated person means an adult for whom a  
10 guardian has been appointed;

11           (7) Party means the respondent, petitioner, guardian,  
12 conservator, or any other person allowed by the court to  
13 participate in a guardianship or protective proceeding;

14           (8) Person, except in the term incapacitated person or  
15 protected person, means an individual, corporation, business trust,  
16 estate, trust, partnership, limited liability company, association,  
17 joint venture, public corporation, government or governmental  
18 subdivision, agency, or instrumentality, or any other legal or  
19 commercial entity;

20           (9) Protected person means an adult for whom a protective  
21 order has been issued;

22           (10) Protective order means an order appointing a  
23 conservator or other order related to management of an adult's  
24 property;

25           (11) Protective proceeding means a judicial proceeding in  
26 which a protective order is sought or has been issued;

27           (12) Record means information that is inscribed on a

1 tangible medium or that is stored in an electronic or other medium  
2 and is retrievable in perceivable form;

3 (13) Respondent means an adult for whom a protective  
4 order or the appointment of a guardian is sought; and

5 (14) State means a state of the United States, the  
6 District of Columbia, Puerto Rico, the United States Virgin  
7 Islands, a federally recognized Indian tribe, or any territory  
8 or insular possession subject to the jurisdiction of the United  
9 States.

10 Sec. 7. A court of this state may treat a foreign country  
11 as if it were a state for the purpose of applying sections 5 to 21  
12 and 25 to 27 of this act.

13 Sec. 8. (1) A court of this state may communicate with  
14 a court in another state concerning a proceeding arising under  
15 the Nebraska Uniform Adult Guardianship and Protective Proceedings  
16 Jurisdiction Act. The court may allow the parties to participate  
17 in the communication. Except as otherwise provided in subsection  
18 (2) of this section, the court shall make a record of the  
19 communication. The record may be limited to the fact that the  
20 communication occurred.

21 (2) Courts may communicate concerning schedules,  
22 calendars, court records, and other administrative matters without  
23 making a record.

24 Sec. 9. (1) In a guardianship or protective proceeding in  
25 this state, a court of this state may request the appropriate court  
26 of another state to do any of the following:

27 (a) Hold an evidentiary hearing;

1           (b) Order a person in that state to produce evidence or  
2 give testimony pursuant to procedures of that state;

3           (c) Order that an evaluation or assessment be made of the  
4 respondent;

5           (d) Order any appropriate investigation of a person  
6 involved in a proceeding;

7           (e) Forward to the court of this state a certified copy  
8 of the transcript or other record of a hearing under subdivision  
9 (a) of this subsection or any other proceeding, any evidence  
10 otherwise produced under subdivision (b) of this subsection, and  
11 any evaluation or assessment prepared in compliance with an order  
12 under subdivision (c) or (d) of this subsection;

13           (f) Issue any order necessary to assure the appearance  
14 in the proceeding of a person whose presence is necessary for the  
15 court to make a determination, including the respondent or the  
16 incapacitated or protected person; or

17           (g) Issue an order authorizing the release of medical,  
18 financial, criminal, or other relevant information in that state,  
19 including protected health information as defined in 45 C.F.R.  
20 160.103, as such regulation existed on January 1, 2011.

21           (2) If a court of another state in which a guardianship  
22 or protective proceeding is pending requests assistance of the kind  
23 provided in subsection (1) of this section, a court of this state  
24 has jurisdiction for the limited purpose of granting the request or  
25 making reasonable efforts to comply with the request.

26           Sec. 10. (1) In a guardianship or protective proceeding,  
27 in addition to other procedures that may be available, testimony

1 of a witness who is located in another state may be offered by  
2 deposition or other means allowable in this state for testimony  
3 taken in another state. The court on its own motion may order  
4 that the testimony of a witness be taken in another state and  
5 may prescribe the manner in which and the terms upon which the  
6 testimony is to be taken.

7 (2) In a guardianship or protective proceeding, a court  
8 in this state may permit a witness located in another state to  
9 be deposed or to testify by telephone or audiovisual or other  
10 electronic means. A court of this state shall cooperate with the  
11 court of the other state in designating an appropriate location for  
12 the deposition or testimony.

13 (3) Documentary evidence transmitted from another state  
14 to a court of this state by technological means that do not  
15 produce an original writing may not be excluded from evidence on an  
16 objection based on the best evidence rule.

17 Sec. 11. (1) For purposes of sections 11 to 19 of this  
18 act:

19 (a) Emergency means a circumstance that likely will  
20 result in substantial harm to a respondent's health, safety, or  
21 welfare, and for which the appointment of a guardian is necessary  
22 because no other person has authority and is willing to act on the  
23 respondent's behalf;

24 (b) Home state means the state in which the respondent  
25 was physically present, including any period of temporary absence,  
26 for at least six consecutive months immediately before the filing  
27 of a petition for a protective order or the appointment of a

1 guardian or, if none, the state in which the respondent was  
2 physically present, including any period of temporary absence, for  
3 at least six consecutive months ending within the six months prior  
4 to the filing of the petition; and

5 (c) Significant-connection state means a state, other  
6 than the home state, with which a respondent has a significant  
7 connection other than mere physical presence and in which  
8 substantial evidence concerning the respondent is available.

9 (2) In determining under section 13 of this act and  
10 subsection (5) of section 20 of this act whether a respondent has  
11 a significant connection with a particular state, the court shall  
12 consider:

13 (a) The location of the respondent's family and other  
14 persons required to be notified of the guardianship or protective  
15 proceeding;

16 (b) The length of time the respondent at any time was  
17 physically present in the state and the duration of any absence;

18 (c) The location of the respondent's property; and

19 (d) The extent to which the respondent has ties to  
20 the state such as voting registration, state or local tax  
21 return filing, vehicle registration, driver's license, social  
22 relationship, and receipt of services.

23 Sec. 12. Sections 11 to 19 of this act provide the  
24 exclusive jurisdictional basis for a court of this state to appoint  
25 a guardian or issue a protective order for an adult.

26 Sec. 13. A court of this state has jurisdiction to  
27 appoint a guardian or issue a protective order for a respondent if:

1           (1) This state is the respondent's home state;

2           (2) On the date the petition is filed, this state is a  
3 significant-connection state and:

4           (a) The respondent does not have a home state or a  
5 court of the respondent's home state has declined to exercise  
6 jurisdiction because this state is a more appropriate forum; or

7           (b) The respondent has a home state, a petition for an  
8 appointment or order is not pending in a court of that state or  
9 another significant-connection state, and, before the court makes  
10 the appointment or issues the order:

11           (i) A petition for an appointment or order is not filed  
12 in the respondent's home state;

13           (ii) An objection to the court's jurisdiction is not  
14 filed by a person required to be notified of the proceeding; and

15           (iii) The court in this state concludes that it is an  
16 appropriate forum under the factors set forth in section 16 of this  
17 act;

18           (3) This state does not have jurisdiction under either  
19 subdivision (1) or (2) of this section, the respondent's home state  
20 and all significant-connection states have declined to exercise  
21 jurisdiction because this state is the more appropriate forum, and  
22 jurisdiction in this state is consistent with the constitutions of  
23 this state and the United States; or

24           (4) The requirements for special jurisdiction under  
25 section 14 of this act are met.

26           Sec. 14. (1) A court of this state lacking jurisdiction  
27 under section 13 of this act has special jurisdiction to do any of

1 the following:

2 (a) Appoint a guardian in an emergency for a term not  
3 exceeding ninety days for a respondent who is physically present in  
4 this state;

5 (b) Issue a protective order with respect to real or  
6 tangible personal property located in this state; or

7 (c) Appoint a guardian or conservator for an  
8 incapacitated or protected person for whom a provisional order to  
9 transfer the proceeding from another state has been issued under  
10 procedures similar to section 20 of this act.

11 (2) If a petition for the appointment of a guardian in  
12 an emergency is brought in this state and this state was not the  
13 respondent's home state on the date the petition was filed, the  
14 court shall dismiss the proceeding at the request of the court of  
15 the home state, if any, whether dismissal is requested before or  
16 after the emergency appointment.

17 Sec. 15. Except as otherwise provided in section 14  
18 of this act, a court that has appointed a guardian or issued  
19 a protective order consistent with the Nebraska Uniform Adult  
20 Guardianship and Protective Proceedings Jurisdiction Act has  
21 exclusive and continuing jurisdiction over the proceeding until it  
22 is terminated by the court or the appointment or order expires by  
23 its own terms.

24 Sec. 16. (1) A court of this state having jurisdiction  
25 under section 13 of this act to appoint a guardian or issue a  
26 protective order may decline to exercise its jurisdiction if it  
27 determines at any time that a court of another state is a more

1 appropriate forum.

2 (2) If a court of this state declines to exercise its  
3 jurisdiction under subsection (1) of this section, it shall either  
4 dismiss or stay the proceeding. The court may impose any condition  
5 the court considers just and proper, including the condition that  
6 a petition for the appointment of a guardian or issuance of a  
7 protective order be filed promptly in another state.

8 (3) In determining whether it is an appropriate forum,  
9 the court shall consider all relevant factors, including:

10 (a) Any expressed preference of the respondent;

11 (b) Whether abuse, neglect, or exploitation of the  
12 respondent has occurred or is likely to occur and which state  
13 could best protect the respondent from the abuse, neglect, or  
14 exploitation;

15 (c) The length of time the respondent was physically  
16 present in or was a legal resident of this or another state;

17 (d) The distance of the respondent from the court in each  
18 state;

19 (e) The financial circumstances of the respondent's  
20 estate;

21 (f) The nature and location of the evidence;

22 (g) The ability of the court in each state to decide  
23 the issue expeditiously and the procedures necessary to present  
24 evidence;

25 (h) The familiarity of the court of each state with the  
26 facts and issues in the proceeding; and

27 (i) If an appointment were made, the court's ability to

1 monitor the conduct of the guardian or conservator.

2           Sec. 17. (1) If at any time a court of this state  
3 determines that it acquired jurisdiction to appoint a guardian  
4 or issue a protective order because of unjustifiable conduct, the  
5 court may:

6           (a) Decline to exercise jurisdiction;

7           (b) Exercise jurisdiction for the limited purpose of  
8 fashioning an appropriate remedy to ensure the health, safety, and  
9 welfare of the respondent or the protection of the respondent's  
10 property or prevent a repetition of the unjustifiable conduct,  
11 including staying the proceeding until a petition for the  
12 appointment of a guardian or issuance of a protective order is  
13 filed in a court of another state having jurisdiction; or

14           (c) Continue to exercise jurisdiction after considering:

15           (i) The extent to which the respondent and all persons  
16 required to be notified of the proceedings have acquiesced in the  
17 exercise of the court's jurisdiction;

18           (ii) Whether it is a more appropriate forum than the  
19 court of any other state under the factors set forth in subsection  
20 (3) of section 16 of this act; and

21           (iii) Whether the court of any other state would have  
22 jurisdiction under factual circumstances in substantial conformity  
23 with the jurisdictional standards of section 13 of this act.

24           (2) If a court of this state determines that it acquired  
25 jurisdiction to appoint a guardian or issued a protective order  
26 because a party seeking to invoke its jurisdiction engaged  
27 in unjustifiable conduct, it may assess against that party

1 necessary and reasonable expenses, including attorney's fees,  
2 investigative fees, court costs, communication expenses, witness  
3 fees and expenses, and travel expenses. The court may not assess  
4 fees, costs, or expenses of any kind against this state or a  
5 governmental subdivision, agency, or instrumentality of this state  
6 unless authorized by law other than the Nebraska Uniform Adult  
7 Guardianship and Protective Proceedings Jurisdiction Act.

8           Sec. 18. If a petition for the appointment of a guardian  
9 or issuance of a protective order is brought in this state and this  
10 state was not the respondent's home state on the date the petition  
11 was filed, in addition to complying with the notice requirements of  
12 this state, notice of the petition must be given to those persons  
13 who would be entitled to notice of the petition if a proceeding  
14 were brought in the respondent's home state. The notice must be  
15 given in the same manner as notice is required to be given in this  
16 state.

17           Sec. 19. Except for a petition for the appointment of a  
18 guardian in an emergency or issuance of a protective order limited  
19 to property located in this state under subdivision (1)(a) or (b)  
20 of section 14 of this act, if a petition for the appointment of a  
21 guardian or issuance of a protective order is filed in this state  
22 and in another state and neither petition has been dismissed or  
23 withdrawn, the following rules apply:

24           (1) If the court in this state has jurisdiction under  
25 section 13 of this act, it may proceed with the case unless a court  
26 in another state acquires jurisdiction under provisions similar to  
27 section 13 of this act before the appointment or issuance of the

1 order; and

2 (2) If the court in this state does not have jurisdiction  
3 under section 13 of this act, whether at the time the petition is  
4 filed or at any time before the appointment or issuance of the  
5 order, the court shall stay the proceeding and communicate with  
6 the court in the other state. If the court in the other state has  
7 jurisdiction, the court in this state shall dismiss the petition  
8 unless the court in the other state determines that the court in  
9 this state is a more appropriate forum.

10 Sec. 20. (1) A guardian or conservator appointed in  
11 this state may petition the court to transfer the guardianship or  
12 conservatorship to another state.

13 (2) Notice of a petition under subsection (1) of this  
14 section must be given to the persons that would be entitled to  
15 notice of a petition in this state for the appointment of a  
16 guardian or conservator.

17 (3) On the court's own motion or on request of the  
18 guardian or conservator, the incapacitated or protected person, or  
19 other person required to be notified of the petition, the court  
20 shall hold a hearing on a petition filed pursuant to subsection (1)  
21 of this section.

22 (4) The court shall issue an order provisionally granting  
23 a petition to transfer a guardianship and shall direct the guardian  
24 to petition for guardianship in the other state if the court is  
25 satisfied that the guardianship will be accepted by the court in  
26 the other state and the court finds that:

27 (a) The incapacitated person is physically present in or

1 is reasonably expected to move permanently to the other state;

2 (b) An objection to the transfer has not been made or,  
3 if an objection has been made, the objector has not established  
4 that the transfer would be contrary to the interests of the  
5 incapacitated person; and

6 (c) Plans for care and services for the incapacitated  
7 person in the other state are reasonable and sufficient.

8 (5) The court shall issue a provisional order granting  
9 a petition to transfer a conservatorship and shall direct the  
10 conservator to petition for conservatorship in the other state if  
11 the court is satisfied that the conservatorship will be accepted by  
12 the court of the other state and the court finds that:

13 (a) The protected person is physically present in or is  
14 reasonably expected to move permanently to the other state, or the  
15 protected person has a significant connection to the other state  
16 considering the factors in subsection (2) of section 11 of this  
17 act;

18 (b) An objection to the transfer has not been made or, if  
19 an objection has been made, the objector has not established that  
20 the transfer would be contrary to the interests of the protected  
21 person; and

22 (c) Adequate arrangements will be made for management of  
23 the protected person's property.

24 (6) The court shall issue a final order confirming the  
25 transfer and terminating the guardianship or conservatorship upon  
26 its receipt of:

27 (a) A provisional order accepting the proceeding from the

1 court to which the proceeding is to be transferred which is issued  
2 under provisions similar to section 21 of this act; and

3 (b) The documents required to terminate a guardianship or  
4 conservatorship in this state.

5 Sec. 21. (1) To confirm transfer of a guardianship or  
6 conservatorship transferred to this state under provisions similar  
7 to section 20 of this act, the guardian or conservator must  
8 petition the court in this state to accept the guardianship or  
9 conservatorship. The petition must include a certified copy of the  
10 other state's provisional order of transfer.

11 (2) Notice of a petition under subsection (1) of this  
12 section must be given to those persons that would be entitled to  
13 notice if the petition were a petition for the appointment of a  
14 guardian or issuance of a protective order in both the transferring  
15 state and this state. The notice must be given in the same manner  
16 as notice is required to be given in this state.

17 (3) On the court's own motion or on request of the  
18 guardian or conservator, the incapacitated or protected person, or  
19 other person required to be notified of the proceeding, the court  
20 shall hold a hearing on a petition filed pursuant to subsection (1)  
21 of this section.

22 (4) The court shall issue an order provisionally granting  
23 a petition filed under subsection (1) of this section unless:

24 (a) An objection is made and the objector establishes  
25 that transfer of the proceeding would be contrary to the interests  
26 of the incapacitated or protected person; or

27 (b) The guardian or conservator is ineligible for

1 appointment in this state.

2 (5) The court shall issue a final order accepting the  
3 proceeding and appointing the guardian or conservator as guardian  
4 or conservator in this state upon its receipt from the court from  
5 which the proceeding is being transferred of a final order issued  
6 under provisions similar to section 20 of this act transferring the  
7 proceeding to this state.

8 (6) Not later than ninety days after issuance of a final  
9 order accepting transfer of a guardianship or conservatorship, the  
10 court shall determine whether the guardianship or conservatorship  
11 needs to be modified to conform to the law of this state.

12 (7) In granting a petition under this section, the court  
13 shall recognize a guardianship or conservatorship order from the  
14 other state, including the determination of the incapacitated or  
15 protected person's incapacity and the appointment of the guardian  
16 or conservator.

17 (8) The denial by a court of this state of a petition to  
18 accept a guardianship or conservatorship transferred from another  
19 state does not affect the ability of the guardian or conservator  
20 to seek appointment as guardian or conservator in this state under  
21 the Nebraska Probate Code if the court has jurisdiction to make  
22 an appointment other than by reason of the provisional order of  
23 transfer.

24 Sec. 22. If a guardian has been appointed in another  
25 state and a petition for the appointment of a guardian is not  
26 pending in this state, the guardian appointed in the other state,  
27 after giving notice to the appointing court of an intent to

1 register, may register the guardianship order in this state by  
2 filing as a foreign judgment in a court, in any appropriate county  
3 of this state, certified copies of the order and letters of office.

4       Sec. 23. If a conservator has been appointed in another  
5 state and a petition for a protective order is not pending in  
6 this state, the conservator appointed in the other state, after  
7 giving notice to the appointing court of an intent to register, may  
8 register the protective order in this state by filing as a foreign  
9 judgment in a court of this state, in any county in which property  
10 belonging to the protected person is located, certified copies of  
11 the order and letters of office and of any bond.

12       Sec. 24. (1) Upon registration of a guardianship or  
13 protective order from another state, the guardian or conservator  
14 may exercise in this state all powers authorized in the order of  
15 appointment except as prohibited under the laws of this state,  
16 including maintaining actions and proceedings in this state and,  
17 if the guardian or conservator is not a resident of this state,  
18 subject to any conditions imposed upon nonresident parties.

19       (2) A court of this state may grant any relief available  
20 under the Nebraska Uniform Adult Guardianship and Protective  
21 Proceedings Jurisdiction Act and other law of this state to  
22 enforce a registered order.

23       Sec. 25. In applying and construing this uniform act,  
24 consideration must be given to the need to promote uniformity of  
25 the law with respect to its subject matter among states that enact  
26 it.

27       Sec. 26. The Nebraska Uniform Adult Guardianship and

1 Protective Proceedings Jurisdiction Act modifies, limits, and  
2 supersedes the federal Electronic Signatures in Global and National  
3 Commerce Act, 15 U.S.C. 7001, as the act existed on January 1,  
4 2011, but does not modify, limit, or supersede section 101(c) of  
5 the act, 15 U.S.C. 7001(c), or authorize electronic delivery of any  
6 of the notices described in section 103(b) of the act, 15 U.S.C.  
7 7003(b).

8           Sec. 27. (1) The Nebraska Uniform Adult Guardianship and  
9 Protective Proceedings Jurisdiction Act applies to guardianship and  
10 protective proceedings begun on or after January 1, 2012.

11           (2) Sections 5 to 10 and 20 to 27 of this act apply to  
12 proceedings begun before January 1, 2012, regardless of whether a  
13 guardianship or protective order has been issued.

14           Sec. 28. Section 30-2201, Revised Statutes Cumulative  
15 Supplement, 2010, is amended to read:

16           30-2201 Sections 30-2201 to 30-2902 and sections 30 and  
17 31 of this act shall be known and may be cited as the Nebraska  
18 Probate Code.

19           Sec. 29. Section 30-2601, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           30-2601 Unless otherwise apparent from the context, in  
22 the Nebraska Probate Code:

23           (1) Incapacitated person means any person who is impaired  
24 by reason of mental illness, mental deficiency, physical illness  
25 or disability, chronic use of drugs, chronic intoxication, or  
26 other cause (except minority) to the extent that the person  
27 lacks sufficient understanding or capacity to make or communicate

1 responsible decisions concerning himself or herself;

2 (2) A protective proceeding is a proceeding under the  
3 provisions of section 30-2630 to determine that a person cannot  
4 effectively manage or apply his or her estate to necessary ends,  
5 either because the person lacks the ability or is otherwise  
6 inconvenienced, or because the person is a minor, and to secure  
7 administration of the person's estate by a conservator or other  
8 appropriate relief;

9 (3) A protected person is a minor or other person for  
10 whom a conservator has been appointed or other protective order has  
11 been made;

12 (4) A ward is a person for whom a guardian has been  
13 appointed. A minor ward is a minor for whom a guardian has been  
14 appointed solely because of minority;

15 (5) Full guardianship means the guardian has been granted  
16 all powers which may be conferred upon a guardian by law; and

17 (6) Limited guardianship means any guardianship which is  
18 not a full guardianship; and-

19 (7) For purposes of article 26 of the Nebraska Probate  
20 Code, interested person means children, spouses, those persons  
21 who would be the heirs if the ward or person alleged to be  
22 incapacitated died without leaving a valid last will and testament  
23 who are adults and any trustee of any trust executed by the ward  
24 or person alleged to be incapacitated. The meaning as it relates  
25 to particular persons may vary from time to time and must be  
26 determined according to the particular purposes of, and matter  
27 involved in, any proceeding. If there are no persons identified as

1 interested persons above, then interested person shall also include  
2 any person or entity named as a devisee in the most recently  
3 executed last will and testament of the ward or person alleged to  
4 be incapacitated.

5           Sec. 30. During the pendency of any proceeding under  
6 sections 30-2601 to 30-2661 after a guardian or conservator is  
7 appointed, upon application by any interested person or concerned  
8 individual and if the accompanying affidavit of the party or his or  
9 her agent shows to the court that the ward's or protected person's  
10 safety, health, or financial welfare is at issue, the court may  
11 issue ex parte orders to address the situation. Ex parte orders  
12 issued under this section shall remain in full force and effect for  
13 no more than ten days or until a hearing is held thereon, whichever  
14 is earlier. Anyone who violates such order after service shall be  
15 guilty of a Class II misdemeanor.

16           Sec. 31. (a) A person, except for a financial institution  
17 as that term is defined in subdivision (12) of section 8-101 or  
18 its officers, directors, employees, or agents or a trust company,  
19 who has been nominated for appointment as a guardian or conservator  
20 shall obtain the following checks and reports of the results and  
21 file such reports with the court at least ten days prior to the  
22 appointment hearing date, unless waived or modified by the court in  
23 the event the protected person requests an expedited hearing under  
24 section 30-2630.01:

25           (1) A national criminal history record check through a  
26 process approved by the State Court Administrator;

27           (2) A check of the central register created in section

1 28-718 for any history of the nominated guardian or conservator  
2 exhibiting behavior injurious to or which may endanger the health  
3 or morals of a child or adult; and

4 (3) A check with the sex offender registry maintained  
5 pursuant to the Sex Offender Registration Act.

6 An order appointing a guardian or conservator shall not  
7 be signed by the judge until such reports have been filed with the  
8 court and reviewed by the judge. Such reports, or the lack thereof,  
9 shall be certified either by affidavit or by obtaining a certified  
10 copy of the report. No reports or checks shall be required by  
11 the court upon the application of a petitioner for an emergency  
12 temporary guardianship or emergency temporary conservatorship. The  
13 court may waive the requirements of this section for good cause  
14 shown. Reports filed under this section shall not be disclosed or  
15 considered a public record.

16 (b) An individual who has been nominated for appointment  
17 as a guardian or conservator shall obtain a credit report of  
18 himself or herself and file such report with the court, if ordered  
19 to do so by the court.

20 Sec. 32. Section 30-2603, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22 30-2603 Any person under a duty to pay or deliver money  
23 or personal property to a minor may perform this duty, in amounts  
24 not exceeding twenty-five thousand dollars per annum, by paying or  
25 delivering the money or property to:

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

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

3           (3) A guardian of the minor; or

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

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

21           Sec. 33. Section 30-2607, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23           30-2607 A minor of fourteen or more years but less  
24 than eighteen years may prevent an appointment of his or her  
25 testamentary guardian from becoming effective, or may cause a  
26 previously accepted appointment to terminate, by filing with the  
27 court in which the will is probated a written objection to the

1 appointment before it is accepted or within thirty days after  
2 notice of its acceptance. An objection may be withdrawn. An  
3 objection does not preclude appointment by the court in a proper  
4 proceeding of the testamentary nominee, or any other suitable  
5 person.

6 Sec. 34. Section 30-2610, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 30-2610 The court may appoint as guardian any person  
9 whose appointment would be in the best interests of the minor.  
10 The court shall appoint a person nominated by the minor, if the  
11 minor is fourteen years of age or older but less than eighteen  
12 years, unless the court finds the appointment contrary to the best  
13 interests of the minor.

14 Sec. 35. Section 30-2611, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 30-2611 (a) Notice of the time and place of hearing of  
17 a petition for the appointment of a guardian of a minor is to be  
18 given by the petitioner in the manner prescribed by section 30-2220  
19 to:

20 (1) the minor, if he or she is fourteen or more years of  
21 age but less than eighteen years of age;

22 (2) the person who has had the principal care and custody  
23 of the minor during the sixty days preceding the date of the  
24 petition; and

25 (3) any living parent of the minor.

26 (b) Upon hearing, if the court finds that a qualified  
27 person seeks appointment, venue is proper, the required notices

1 have been given, the requirements of section 30-2608 have been met,  
2 and the welfare and best interests of the minor will be served by  
3 the requested appointment, it shall make the appointment. In other  
4 cases the court may dismiss the proceedings, or make any other  
5 disposition of the matter that will best serve the interest of the  
6 minor.

7 (c) If necessary, the court may appoint a temporary  
8 guardian, with the status of an ordinary guardian of a minor, but  
9 the authority of a temporary guardian shall not last longer than  
10 six months. In an emergency, the court may appoint a temporary  
11 guardian of a minor without notice, pending notice and hearing.

12 (d) If, at any time in the proceeding, the court  
13 determines that the interests of the minor are or may be  
14 inadequately represented, it may appoint an attorney to represent  
15 the minor, giving consideration to the preference of the minor if  
16 the minor is fourteen years of age or older but less than eighteen  
17 years of age.

18 Sec. 36. Section 30-2613, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 30-2613 (1) A guardian of a minor has the powers and  
21 responsibilities of a parent who has not been deprived of custody  
22 of his or her minor and unemancipated child, except that a guardian  
23 is not legally obligated to provide from his or her own funds  
24 for the ward and is not liable to third persons by reason of  
25 the parental relationship for acts of the ward. In particular,  
26 and without qualifying the foregoing, a guardian has the following  
27 powers and duties:

1           (a) He or she must take reasonable care of his or her  
2 ward's personal effects and commence protective proceedings if  
3 necessary to protect other property of the ward.

4           (b) He or she may receive money payable for the support  
5 of the ward to the ward's parent, guardian or custodian under  
6 the terms of any statutory benefit or insurance system, or any  
7 private contract, devise, trust, conservatorship or custodianship.  
8 He or she also may receive money or property of the ward paid  
9 or delivered by virtue of section 30-2603. Any sums so received  
10 shall be applied to the ward's current needs for support, care and  
11 education, except as provided in subdivisions (2) and (3) of this  
12 section. He or she must exercise due care to conserve any excess  
13 for the ward's future needs unless a conservator has been appointed  
14 for the estate of the ward, in which case such excess shall be  
15 paid over at least annually to the conservator. Sums so received  
16 by the guardian are not to be used for compensation for his or  
17 her services except as approved by order of court. A guardian may  
18 institute proceedings to compel the performance by any person of  
19 a duty to support the ward or to pay sums for the welfare of the  
20 ward.

21           (c) The guardian is empowered to facilitate the ward's  
22 education, social, or other activities and to authorize medical or  
23 other professional care, treatment, or advice. A guardian is not  
24 liable by reason of this consent for injury to the ward resulting  
25 from the negligence or acts of third persons unless it would have  
26 been illegal for a parent to have consented. A guardian may consent  
27 to the marriage or adoption of his or her ward.

1           (d) A guardian must report the condition of his or her  
2 ward and of the ward's estate which has been subject to his or  
3 her possession or control, as ordered by court on petition of any  
4 person interested in the minor's welfare or as required by court  
5 rule, and upon termination of the guardianship settle his or her  
6 accounts with the ward or his or her legal representatives and pay  
7 over and deliver all of the estate and effects remaining in his or  
8 her hands or due from him or her on settlement to the person or  
9 persons who shall be lawfully entitled thereto.

10           (2) The appointment of a guardian for a minor shall  
11 not relieve his or her parent or parents, liable for the support  
12 of such minor, from their obligation to provide for such minor.  
13 For the purposes of guardianship of minors, the application of  
14 guardianship income and principal after payment of debts and  
15 charges of managing the estate, in relationship to the respective  
16 obligations owed by fathers, mothers, and others, for the support,  
17 maintenance and education of the minor shall be:

18           (a) The income and property of the father and mother  
19 of the minor in such manner as they can reasonably afford,  
20 regard being had to the situation of the family and to all the  
21 circumstances of the case;

22           (b) The guardianship income, in whole or in part,  
23 as shall be judged reasonable considering the extent of the  
24 guardianship income and the parents' financial ability;

25           (c) The income and property of any other person having a  
26 legal obligation to support the minor, in such manner as the person  
27 can reasonably afford, regard being had to the situation of the

1 person's family and to all the circumstances of the case; and

2 (d) The guardianship principal, either personal or real  
3 estate, in whole or in part, as shall be judged for the best  
4 interest of the minor, considering all the circumstances of the  
5 minor and those liable for his or her support.

6 (3) Notwithstanding the provisions of subsection (2) of  
7 this section, the court may from time to time authorize the  
8 guardian to use so much of the guardianship income or principal,  
9 whether personal or real estate, as it may deem proper, considering  
10 all the circumstances of the minor and those liable for his or  
11 her support, if it is shown that (a) an emergency exists which  
12 justifies an expenditure, or (b) a fund has been given to the minor  
13 for a special purpose and the court can, with reasonable certainty,  
14 ascertain such purpose.

15 (4) The court may require a guardian to furnish a bond  
16 in an amount and conditioned in accordance with the provisions of  
17 section 30-2640.

18 (5) A guardian shall not change a ward's place of abode  
19 to a location outside of the State of Nebraska without court  
20 permission.

21 Sec. 37. Section 30-2616, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 30-2616 (a) Any person interested in the welfare of a  
24 ward, or the ward, if fourteen or more years of age but less than  
25 eighteen years of age, may petition for removal of a guardian on  
26 the ground that removal would be in the best interest of the ward.  
27 A guardian may petition for permission to resign. A petition for

1 removal or for permission to resign may, but need not, include a  
2 request for appointment of a successor guardian.

3 (b) After notice and hearing on a petition for removal or  
4 for permission to resign, the court may terminate the guardianship  
5 and make any further order that may be appropriate.

6 (c) If, at any time in the proceeding, the court  
7 determines that the interests of the ward are, or may be,  
8 inadequately represented, it may appoint an attorney to represent  
9 the minor, giving consideration to the preference of the minor if  
10 the minor is fourteen or more years of age but less than eighteen  
11 years of age.

12 Sec. 38. Section 30-2620, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 30-2620 (a) The court may appoint a guardian if it is  
15 satisfied by clear and convincing evidence that the person for  
16 whom a guardian is sought is incapacitated and that the appointment  
17 is necessary or desirable as the least restrictive alternative  
18 available for providing continuing care or supervision of the  
19 person of the person alleged to be incapacitated. If the court  
20 finds that a guardianship should be created, the guardianship shall  
21 be a limited guardianship unless the court finds by clear and  
22 convincing evidence that a full guardianship is necessary. If a  
23 limited guardianship is created, the court shall, at the time of  
24 appointment or later, specify the authorities and responsibilities  
25 which the guardian and ward, acting together or singly, shall have  
26 with regard to:

27 (1) Selecting the ward's place of abode within this state

1 or, with court permission, outside of ~~without~~ this state;

2 (2) Arranging for medical care for the ward;

3 (3) Protecting the personal effects of the ward;

4 (4) Giving necessary consent, approval, or releases on  
5 behalf of the ward;

6 (5) Arranging for training, education, or other  
7 habilitating services appropriate for the ward;

8 (6) Applying for private or governmental benefits to  
9 which the ward may be entitled;

10 (7) Instituting proceedings to compel any person under a  
11 duty to support the ward or to pay sums for the welfare of the ward  
12 to perform such duty, if no conservator has been appointed;

13 (8) Entering into contractual arrangements on behalf of  
14 the ward, if no conservator has been appointed; and

15 (9) Receiving money and tangible property deliverable  
16 to the ward and applying such money and property to the ward's  
17 expenses for room and board, medical care, personal effects,  
18 training, education, and habilitating services, if no conservator  
19 has been appointed, or requesting the conservator to expend the  
20 ward's estate by payment to third persons to meet such expenses.

21 (b) In a limited guardianship, the powers shall be  
22 endorsed upon the letters of appointment of the guardian and  
23 shall be treated as specific limitations upon the general powers,  
24 rights, and duties accorded by law to the guardian. In a full  
25 guardianship, the letters of appointment shall specify that the  
26 guardian is granted all powers conferred upon guardians by law.  
27 After appointment, the ward may retain an attorney for the

1 sole purpose of challenging the guardianship, the terms of the  
2 guardianship, or the actions of the guardian on behalf of the ward.

3 (c) A guardian shall not change a ward's place of abode  
4 to a location outside of the State of Nebraska without court  
5 permission.

6 Sec. 39. Section 30-2626, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 30-2626 (a) If a person alleged to be incapacitated has  
9 no guardian and an emergency exists, the court may, pending notice  
10 and hearing, exercise the power of a guardian or enter an ex parte  
11 order appointing a temporary guardian to address the emergency.  
12 The order and letters of temporary guardianship shall specify the  
13 powers and duties of the temporary guardian limiting the powers and  
14 duties to those necessary to address the emergency.

15 (b) When the court takes action to exercise the powers of  
16 a guardian or to appoint a temporary guardian under subsection (a)  
17 of this section, an expedited hearing shall be held if requested by  
18 the person alleged to be incapacitated, or by any interested ~~party,~~  
19 person, if the request is filed more than ten business days prior  
20 to the date set for the hearing on the petition for appointment  
21 of the guardian. If an expedited hearing is to be held, the  
22 hearing shall be held within ten business days after the request  
23 is received. At the hearing on the temporary appointment, the  
24 petitioner shall have the burden of showing by a preponderance of  
25 the evidence that temporary guardianship continues to be necessary  
26 to address the emergency situation. Unless the person alleged to  
27 be incapacitated has counsel of his or her own choice, the court

1 may appoint an attorney to represent the person alleged to be  
2 incapacitated at the hearing as provided in section 30-2619.

3 (c) If an expedited hearing is requested, notice shall  
4 be served as provided in section 30-2625. The notice shall specify  
5 that a temporary guardian has been appointed and shall be given at  
6 least twenty-four hours prior to the expedited hearing.

7 (d) At the expedited hearing, the court may render a  
8 judgment authorizing the temporary guardianship to continue beyond  
9 the original ten-day period. The judgment shall prescribe the  
10 specific powers and duties of the temporary guardian in the letters  
11 of temporary guardianship and shall be effective for a single  
12 ninety-day period. For good cause shown, the court may extend the  
13 temporary guardianship for successive ninety-day periods.

14 (e) The temporary guardianship shall terminate at the  
15 end of the ninety-day period in which the temporary guardianship  
16 is valid or at any time prior thereto if the court deems the  
17 circumstances leading to the order for temporary guardianship no  
18 longer exist or if an order has been entered as a result of a  
19 hearing pursuant to section 30-2619 which has been held during the  
20 ninety-day period.

21 (f) If the court denies the request for the ex parte  
22 order, the court may, in its discretion, enter an order for an  
23 expedited hearing pursuant to subsections (b) through (e) of this  
24 section.

25 (g) If the petitioner requests the entry of an order of  
26 temporary guardianship pursuant to subsection (a) of this section  
27 without requesting an ex parte order, the court may hold an

1 expedited hearing pursuant to subsections (b) through (e) of this  
2 section.

3 (h) If an appointed guardian is not effectively  
4 performing his or her duties and the court further finds that the  
5 welfare of the incapacitated person requires immediate action, it  
6 may, pending notice and hearing in accordance with section 30-2220,  
7 appoint a temporary guardian for the incapacitated person for a  
8 specified period not to exceed ninety days. For good cause shown,  
9 the court may extend the temporary guardianship for successive  
10 ninety-day periods. A temporary guardian appointed pursuant to  
11 this subsection has only the powers and duties specified in the  
12 previously appointed guardian's letters of guardianship, and the  
13 authority of any permanent guardian previously appointed by the  
14 court is suspended so long as a temporary guardian has authority.

15 (i) A temporary guardian may be removed at any time. A  
16 temporary guardian shall make any report the court requires, except  
17 that a temporary guardian shall not be required to provide the  
18 checks and reports under section 31 of this act. In other respects  
19 the provisions of the Nebraska Probate Code concerning guardians  
20 apply to temporary guardians.

21 Sec. 40. Section 30-2628, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 30-2628 (a) Except as limited by ~~an order entered~~  
24 ~~pursuant to~~ section 30-2620, a guardian of an incapacitated person  
25 has the same powers, rights, and duties respecting ~~his or her~~  
26 the guardian's ward that a parent has respecting ~~his or her~~ the  
27 parent's unemancipated minor child, except that a guardian is not

1 liable to third persons for acts of the ward solely by reason of  
2 the parental relationship. In particular, and without qualifying  
3 the foregoing, a guardian has the following powers and duties,  
4 except as may be specified by order of the court:

5 (1) To the extent that it is consistent with the terms  
6 of any order by a court of competent jurisdiction relating to  
7 detention or commitment of the ward, ~~he or she~~ a guardian is  
8 entitled to custody of the person of his or her ward and may  
9 establish the ward's place of abode within this state or, with  
10 court permission, outside of ~~without~~ this state. When establishing  
11 the ward's place of abode, a guardian shall make every reasonable  
12 effort to ensure that the placement is the least restrictive  
13 alternative. A guardian shall authorize a placement to a more  
14 restrictive environment only after careful evaluation of the  
15 need for such placement. The guardian may obtain a professional  
16 evaluation or assessment that such placement is in the best  
17 interest of the ward.

18 (2) If entitled to custody of his or her ward, ~~he or~~  
19 ~~she~~ a guardian shall make provision for the care, comfort, and  
20 maintenance of his or her ward and, whenever appropriate, arrange  
21 for ~~his or her~~ the ward's training and education. Without regard to  
22 custodial rights of the ward's person, ~~he or she~~ a guardian shall  
23 take reasonable care of his or her ward's clothing, furniture,  
24 vehicles, and other personal effects and commence protective  
25 proceedings if other property of his or her ward is in need  
26 of protection.

27 (3) A guardian may give any consents or approvals

1 that may be necessary to enable the ward to receive medical,  
2 psychiatric, psychological, or other professional care, counsel,  
3 treatment, or service. When making such medical or psychiatric  
4 decisions, the guardian shall consider and carry out the intent of  
5 the ward expressed prior to incompetency to the extent allowable  
6 by law. Notwithstanding this provision or any other provision of  
7 the Nebraska Probate Code, the ward may authorize the release  
8 of financial, medical, and other confidential records pursuant to  
9 sections 20-161 to 20-166.

10 (4) If no conservator for the estate of the ward has been  
11 appointed, a guardian shall, within thirty days after appointment,  
12 prepare and file with the appointing court a complete inventory of  
13 the ward's estate together with the guardian's oath or affirmation  
14 that the inventory is complete and accurate so far as the guardian  
15 is informed. The guardian shall mail a copy thereof by first-class  
16 mail to the ward, if the ward can be located, has attained the age  
17 of fourteen years, and to all other interested persons as defined  
18 in section 30-2601. The guardian shall keep suitable records of the  
19 guardian's administration and exhibit the same on request of any  
20 interested person. To the extent a guardian, who has not been named  
21 a conservator, has possession or control of the ward's estate, the  
22 guardian shall file with the court an updated inventory every year  
23 along with an affidavit of mailing showing that copies were sent  
24 to all interested persons and, if a bond has been required, to  
25 the bonding company, by certified mail, return receipt requested,  
26 and by first-class mail along with a form to send back to the  
27 court that indicates if such person wants to continue receiving

1 notifications about the proceedings.

2 ~~(4)~~ (5) If no conservator for the estate of the ward has  
3 been appointed, ~~he or she~~ a guardian may:

4 (i) Institute proceedings to compel any person under a  
5 duty to support the ward or to pay sums for the welfare of the ward  
6 to perform ~~his or her~~ such person's duty;

7 (ii) Receive money and tangible property deliverable to  
8 the ward and apply the money and property for support, care, and  
9 education of the ward; but ~~he or she~~ a guardian may not use funds  
10 from his or her ward's estate for room and board which ~~he or she,~~  
11 ~~his or her~~ the guardian or the guardian's spouse, parent, or child  
12 has furnished the ward unless a charge for the service is approved  
13 by order of the court made upon notice to at least one of the next  
14 of kin of the ward, if notice is possible. ~~He or she~~ A guardian  
15 must exercise care to conserve any excess for the ward's needs; and

16 (iii) Exercise a settlor's powers with respect to  
17 revocation, amendment, or distribution of trust property when  
18 authorized by a court acting under the authority of subsection (f)  
19 of section 30-3854. In acting under the authority of subsection (f)  
20 of section 30-3854, the court shall proceed in the same manner as  
21 provided under subdivision (3) of section 30-2637.

22 ~~(5)~~ (6) A guardian is required to report the condition of  
23 his or her ward and of the estate which has been subject to ~~his~~  
24 ~~or her~~ the guardian's possession or control, at least every year  
25 and as required by the court or court rule. The court shall receive  
26 from any interested person, for a period of thirty days after the  
27 filing of the guardian's report, any comments with regard to the

1 need for continued guardianship or amendment of the guardianship  
2 order. If the court has reason to believe that additional rights  
3 should be returned to the ward or assigned to the guardian,  
4 the court shall set a date for a hearing and may provide all  
5 protections as set forth for the original finding of incapacity and  
6 appointment of a guardian.

7 ~~(6)~~ (7) If a conservator has been appointed, all of the  
8 ward's estate received by the guardian in excess of those funds  
9 expended to meet current expenses for support, care, and education  
10 of the ward must be paid to the conservator for management as  
11 provided in the Nebraska Probate Code, and the guardian must  
12 account to the conservator for funds expended.

13 (b) Any guardian of one for whom a conservator also has  
14 been appointed shall control the custody and care of the ward,  
15 and is entitled to receive reasonable sums for ~~his or her~~ the  
16 guardian's services and for room and board furnished to the ward as  
17 agreed upon between ~~him or her~~ the guardian and the conservator,  
18 ~~provided if~~ if the amounts agreed upon are reasonable under the  
19 circumstances. The guardian may request the conservator to expend  
20 the ward's estate by payment to third persons or institutions for  
21 the ward's care and maintenance.

22 (c) Nothing in subdivision (a)(3) of this section or in  
23 any other part of this section shall be construed to alter the  
24 decisionmaking authority of an attorney in fact designated and  
25 authorized under sections 30-3401 to 30-3432 to make health care  
26 decisions pursuant to a power of attorney for health care.

27 Sec. 41. Section 30-2630.01, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           30-2630.01 (a) If a person alleged to be in need  
3 of protection under section 30-2630 has no conservator and an  
4 emergency exists, the court may, pending notice and hearing,  
5 exercise the power of a conservator or enter an emergency  
6 protective order appointing a temporary conservator to address  
7 the emergency.

8           (b) When the court takes action to exercise the powers  
9 of a conservator or to appoint a temporary conservator under  
10 subsection (a) of this section, an expedited hearing shall be held  
11 if requested by the person alleged to be in need of protection,  
12 or by any interested ~~party~~, person, if the request is filed more  
13 than ten business days prior to the date set for the hearing on  
14 the petition for appointment of the conservator. If an expedited  
15 hearing is to be held, the hearing shall be held within ten  
16 business days after the request is received. At the hearing on  
17 the temporary appointment, the petitioner shall have the burden  
18 of showing by a preponderance of the evidence that temporary  
19 conservatorship continues to be necessary to address the emergency  
20 situation. Unless the person alleged to be in need of protection  
21 has counsel of his or her own choice, the court may appoint an  
22 attorney to represent the person at the hearing as provided in  
23 section 30-2636.

24           (c) If an expedited hearing is requested, notice shall  
25 be served as provided in section 30-2634. The notice shall specify  
26 that a temporary conservator has been appointed and shall be given  
27 at least twenty-four hours prior to the expedited hearing.

1           (d) At the expedited hearing, the court may render a  
2 judgment authorizing the temporary conservatorship to continue  
3 beyond the original ten-day period. The judgment shall prescribe  
4 the specific powers and duties of the temporary conservator in the  
5 letters of temporary conservatorship and shall be effective for a  
6 ninety-day period. For good cause shown, the court may extend the  
7 temporary conservatorship for successive ninety-day periods.

8           (e) The temporary conservatorship shall terminate at the  
9 end of the ninety-day period in which the temporary conservatorship  
10 is valid or at any time prior thereto if the court deems the  
11 circumstances leading to the order for temporary conservatorship  
12 no longer exist or if an order has been entered as a result of a  
13 hearing pursuant to section 30-2636 which has been held during the  
14 ninety-day period.

15           (f) If the court denies the request for the ex parte  
16 order, the court may, in its discretion, enter an order for an  
17 expedited hearing pursuant to subsections (b) through (e) of this  
18 section.

19           (g) If the petitioner requests the entry of an order  
20 of temporary conservatorship pursuant to subsection (a) of this  
21 section without requesting an ex parte order, the court may hold an  
22 expedited hearing pursuant to subsections (b) through (e) of this  
23 section.

24           (h) A temporary conservator may be removed at any time.  
25 A temporary conservator shall make any report the court requires.  
26 In other respects the provisions of the Nebraska Probate Code  
27 concerning conservators apply to temporary conservators.

1           Sec. 42. Section 30-2636, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           30-2636 (a) Upon receipt of a petition for appointment of  
4 a conservator or other protective order because of minority, the  
5 court shall set a date for hearing on the matters alleged in the  
6 petition. If, at any time in the proceeding, the court determines  
7 that the interests of the minor are or may be inadequately  
8 represented, the court may appoint an attorney to represent the  
9 minor, giving consideration to the choice of the minor if he or she  
10 is fourteen years of age or older but less than eighteen years of  
11 age. A lawyer appointed by the court to represent a minor has the  
12 powers and duties of a guardian ad litem.

13           (b) Upon receipt of a petition for appointment of a  
14 conservator or other protective order for reasons other than  
15 minority, the court shall set a date for hearing. Unless the person  
16 to be protected has counsel of his or her own choice, the court  
17 may appoint an attorney to represent him or her in the proceeding.  
18 The court may appoint a guardian ad litem to advocate for the  
19 best interests of the person to be protected. If the alleged  
20 disability is mental illness, mental deficiency, physical illness  
21 or disability, chronic use of drugs, or chronic intoxication, the  
22 court may direct that the person to be protected be examined by a  
23 physician designated by the court, preferably a physician who is  
24 not connected with any institution in which the person is a patient  
25 or is detained. The court may send a visitor to interview the  
26 person to be protected. The visitor may be a guardian ad litem or  
27 an officer or employee of the court.

1           (c) After hearing, upon finding that clear and convincing  
2 evidence exists for the appointment of a conservator or other  
3 protective order, the court shall make an appointment or other  
4 appropriate protective order.

5           Sec. 43. Section 30-2639, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           30-2639 (a) The court may appoint an individual,  
8 or a corporation with general power to serve as trustee, as  
9 conservator of the estate of a protected person, except that  
10 it shall be unlawful for any agency providing residential care  
11 in an institution or community-based program or any owner,  
12 part owner, manager, administrator, employee, or spouse of an  
13 owner, part owner, manager, administrator, or employee of any  
14 nursing home, room and board home, assisted-living facility, or  
15 institution engaged in the care, treatment, or housing of any  
16 person physically or mentally handicapped, infirm, or aged to be  
17 appointed conservator of any such person residing, being under  
18 care, receiving treatment, or being housed in any such home,  
19 facility, or institution within the State of Nebraska. Nothing in  
20 this subsection shall prevent the spouse, adult child, parent,  
21 or other relative of the person in need of protection from being  
22 appointed conservator.

23           (b) Persons who are not disqualified under subsection  
24 (a) of this section and who exhibit the ability to exercise the  
25 powers to be assigned by the court have priority for appointment as  
26 conservator in the following order:

27           (1) A person nominated most recently by one of the

1 following methods:

2 (i) A person nominated by the protected person in a power  
3 of attorney or durable power of attorney;

4 (ii) A person acting under a power of attorney or durable  
5 power of attorney; or

6 (iii) A person nominated by an attorney in fact who is  
7 given power to nominate in a power of attorney or a durable power  
8 of attorney executed by the protected person;

9 (2) A conservator, guardian of property, or other like  
10 fiduciary appointed or recognized by the appropriate court of any  
11 other jurisdiction in which the protected person resides;

12 (3) An individual or corporation nominated by the  
13 protected person if he or she is fourteen or more years of age  
14 but less than eighteen years of age and has, in the opinion of the  
15 court, sufficient mental capacity to make an intelligent choice;

16 (4) The spouse of the protected person;

17 (5) An adult child of the protected person;

18 (6) A parent of the protected person or a person  
19 nominated by the will of a deceased parent;

20 (7) Any relative of the protected person with whom he or  
21 she has resided for more than six months prior to the filing of the  
22 petition;

23 (8) A person nominated by the person who is caring for  
24 him or her or paying benefits to him or her.

25 (c) When appointing a conservator, the court shall take  
26 into consideration the expressed wishes of the person to be  
27 protected. A person having priority listed in subdivision (2), (4),

1 (5), (6), or (7) of subsection (b) of this section may nominate  
2 in writing a person to serve in his or her stead. With respect to  
3 persons having equal priority, the court shall select the person it  
4 deems best qualified of those willing to serve. The court, acting  
5 in the best interest of the protected person, may pass over a  
6 person having priority and appoint a person having lower priority  
7 or no priority.

8 (d) In its order of appointment, unless waived by the  
9 court, the court shall require any person appointed as conservator  
10 to successfully complete within three months of such appointment  
11 a training program approved by the State Court Administrator. If  
12 the person appointed as conservator does not complete the training  
13 program, the court shall issue an order to show cause why such  
14 person should not be removed as conservator.

15 Sec. 44. Section 30-2640, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 30-2640 The court may require a conservator to furnish  
18 a bond conditioned upon faithful discharge of all duties of the  
19 trust according to law, with sureties as it shall specify and  
20 may eliminate the requirement or decrease or increase the required  
21 amount of any such bond previously furnished. The amount of the  
22 bond may be fixed at the discretion of the court, but if not  
23 otherwise fixed by the court, the amount of the bond shall be  
24 in the amount of the aggregate capital value of the personal  
25 property of the estate in his or her control plus one year's  
26 estimated income from all sources minus the value of securities  
27 deposited under arrangements requiring an order of the court for

1 ~~their removal. The court, in lieu of sureties on a bond, may accept~~  
2 ~~other security for the performance of the bond, including a pledge~~  
3 ~~of securities or a mortgage of land. The court may consider the~~  
4 ~~desires of the protected person as expressed in any written power~~  
5 ~~of attorney in determining whether a bond shall be required and the~~  
6 ~~amount thereof.~~

7       For estates with a net value of more than ten thousand  
8 dollars, the bond for a conservator shall be in the amount of the  
9 aggregate capital value of the personal property of the estate in  
10 the conservator's control plus one year's estimated income from all  
11 sources minus the value of securities and other assets deposited  
12 under arrangements requiring an order of the court for their  
13 removal. The bond of the conservator shall be conditioned upon the  
14 faithful discharge of all duties of the trust according to law,  
15 with sureties as the court shall specify. The court, in lieu of  
16 sureties on a bond, may accept other security for the performance  
17 of the bond, including a pledge of securities or a mortgage of  
18 land owned by the conservator. For good cause shown, the court may  
19 eliminate the requirement of a bond or decrease or increase the  
20 required amount of any such bond previously furnished. The court  
21 may consider as one of the factors of good cause, when determining  
22 whether a bond shall be required and the amount thereof, the  
23 desires of the protected person as expressed in any written power  
24 of attorney. No bond shall be required of banks or trust companies  
25 serving as conservator.

26       Sec. 45. Section 30-2647, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

1           30-2647 Within ~~ninety~~ thirty days after ~~his~~ appointment,  
2 every conservator shall prepare and file with the appointing  
3 court a complete inventory of the estate of the protected person  
4 together with ~~his~~ the conservator's oath or affirmation that ~~it~~ the  
5 inventory is complete and accurate so far as he or she is informed.  
6 The conservator shall ~~provide~~ mail a copy thereof by first-class  
7 mail to the protected person, if ~~he~~ the protected person can  
8 be located, has attained the age of fourteen years or older but  
9 is less than eighteen years, and has ~~sufficient~~ mental capacity  
10 ~~to understand these matters,~~ and to any parent or guardian with  
11 ~~whom the protected person resides,~~ all other interested persons  
12 as defined in section 30-2601. Every conservator shall file an  
13 updated inventory with the annual accounting required under section  
14 30-2648. The conservator shall keep suitable records of his or her  
15 administration and exhibit the same on request of any interested  
16 person.

17           Sec. 46. Section 30-2648, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19           30-2648 Every conservator must account to the court for  
20 his or her administration of the trust annually, upon his or  
21 her resignation or removal, and at such other times as the court  
22 may direct. On termination of the protected person's minority or  
23 disability, a conservator may account to the court, or ~~he~~ the  
24 conservator may account to the former protected person or ~~his~~  
25 the former protected person's personal representative. Subject to  
26 appeal or vacation within the time permitted, an order, made  
27 upon notice and hearing, allowing an intermediate account of a

1 conservator, adjudicates as to ~~his~~ the conservator's liabilities  
2 concerning the matters considered in connection therewith; and an  
3 order, made upon notice and hearing, allowing a final account  
4 adjudicates as to all previously unsettled liabilities of the  
5 conservator to the protected person or ~~his~~ the protected person's  
6 successors relating to the conservatorship. In connection with  
7 any account, the court may require a conservator to submit to a  
8 physical check of the estate in his or her control, to be made in  
9 any manner the court may specify.

10           Sec. 47. Section 30-2655, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12           30-2655 (a) The court may, at the time of appointment or  
13 later, limit the powers of a conservator otherwise conferred by  
14 sections 30-2653 and 30-2654, or previously conferred by the court,  
15 and may at any time relieve ~~him~~ the conservator of any limitation.  
16 If the court limits any power conferred on the conservator by  
17 section 30-2653 or 30-2654, the limitation shall be endorsed upon  
18 ~~his~~ the conservator's letters of appointment.

19           (b) A conservator shall not change a protected person's  
20 place of abode to a location outside of the State of Nebraska  
21 without court permission.

22           Sec. 48. The Revisor of Statutes shall assign sections 30  
23 and 31 of this act within Chapter 30, article 26, Part 1.

24           Sec. 49. This act becomes operative on January 1, 2012.

25           Sec. 50. Original sections 25-2708, 25-2911, 25-2943,  
26 30-1601, 30-2601, 30-2603, 30-2607, 30-2610, 30-2611, 30-2613,  
27 30-2616, 30-2620, 30-2626, 30-2628, 30-2630.01, 30-2636, 30-2639,

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1 30-2640, 30-2647, 30-2648, and 30-2655, Reissue Revised Statutes  
2 of Nebraska, and section 30-2201, Revised Statutes Cumulative  
3 Supplement, 2010, are repealed.