

E AND R AMENDMENTS TO LB 157

Introduced by Larson, 40, Chairperson Enrollment and Review

1           1. Strike the original sections and all amendments  
2 thereto and insert the following 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 nineteen  
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 31 and  
17 32 of this act shall be known and may be cited as the Nebraska  
18 Probate Code.

19           Sec. 29. Section 30-2209, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           30-2209 Subject to additional definitions contained in  
22 the subsequent articles which are applicable to specific articles  
23 or parts, and unless the context otherwise requires, in the  
24 Nebraska Probate Code:

25           (1) Application means a written request to the registrar  
26 for an order of informal probate or appointment under part 3 of  
27 Article 24.

1           (2) Beneficiary, as it relates to trust beneficiaries,  
2 includes a person who has any present or future interest, vested  
3 or contingent, and also includes the owner of an interest by  
4 assignment or other transfer, and as it relates to a charitable  
5 trust includes any person entitled to enforce the trust.

6           (3) Child includes any individual entitled to take as  
7 a child under the code by intestate succession from the parent  
8 whose relationship is involved and excludes any person who is only  
9 a stepchild, a foster child, or a grandchild or any more remote  
10 descendant.

11           (4) Claim, in respect to estates of decedents and  
12 protected persons, includes liabilities of the decedent or  
13 protected person whether arising in contract, in tort or otherwise,  
14 and liabilities of the estate which arise at or after the death of  
15 the decedent or after the appointment of a conservator, including  
16 funeral expenses and expenses of administration. The term does not  
17 include estate or inheritance taxes, demands or disputes regarding  
18 title of a decedent or protected person to specific assets alleged  
19 to be included in the estate.

20           (5) Court means the court or branch having jurisdiction  
21 in matters relating to the affairs of decedents. This court in this  
22 state is known as county court or, for purposes of guardianship  
23 of a juvenile over which a separate juvenile court already has  
24 jurisdiction, the county court or separate juvenile court.

25           (6) Conservator means a person who is appointed by a  
26 court to manage the estate of a protected person.

27           (7) Devise, when used as a noun, means a testamentary

1 disposition of real or personal property and, when used as a verb,  
2 means to dispose of real or personal property by will.

3 (8) Devisee means any person designated in a will to  
4 receive a devise. In the case of a devise to an existing trust or  
5 trustee, or to a trustee on trust described by will, the trust or  
6 trustee is the devisee and the beneficiaries are not devisees.

7 (9) Disability means cause for a protective order as  
8 described by section 30-2630.

9 (10) Disinterested witness to a will means any individual  
10 who acts as a witness to a will and is not an interested witness  
11 to such will.

12 (11) Distributee means any person who has received  
13 property of a decedent from his or her personal representative  
14 other than as a creditor or purchaser. A testamentary trustee  
15 is a distributee only to the extent of distributed assets or  
16 increment thereto remaining in his or her hands. A beneficiary  
17 of a testamentary trust to whom the trustee has distributed  
18 property received from a personal representative is a distributee  
19 of the personal representative. For purposes of this provision,  
20 testamentary trustee includes a trustee to whom assets are  
21 transferred by will, to the extent of the devised assets.

22 (12) Estate includes the property of the decedent, trust,  
23 or other person whose affairs are subject to the Nebraska Probate  
24 Code as originally constituted and as it exists from time to time  
25 during administration.

26 (13) Exempt property means that property of a decedent's  
27 estate which is described in section 30-2323.

1           (14) Fiduciary includes personal representative,  
2 guardian, conservator, and trustee.

3           (15) Foreign personal representative means a personal  
4 representative of another jurisdiction.

5           (16) Formal proceedings mean those conducted before a  
6 judge with notice to interested persons.

7           (17) Guardian means a person who has qualified as  
8 a guardian of a minor or incapacitated person pursuant to  
9 testamentary or court appointment, but excludes one who is merely  
10 a guardian ad litem.

11           (18) Heirs mean those persons, including the surviving  
12 spouse, who are entitled under the statutes of intestate succession  
13 to the property of a decedent.

14           (19) Incapacitated person is as defined in section  
15 30-2601.

16           (20) Informal proceedings mean those conducted without  
17 notice to interested persons by an officer of the court acting as  
18 a registrar for probate of a will or appointment of a personal  
19 representative.

20           (21) Interested Except for purposes of article 26 of the  
21 Nebraska Probate Code, interested person includes heirs, devisees,  
22 children, spouses, creditors, beneficiaries, and any others having  
23 a property right in or claim against a trust estate or the  
24 estate of a decedent, ward, or protected person which may be  
25 affected by the proceeding. It also includes persons having  
26 priority for appointment as personal representative, and other  
27 fiduciaries representing interested persons. The meaning as it



1 relates to particular persons may vary from time to time and must  
2 be determined according to the particular purposes of, and matter  
3 involved in, any proceeding.

4 (22) Interested witness to a will means any individual  
5 who acts as a witness to a will at the date of its execution and  
6 who is or would be entitled to receive any property thereunder  
7 if the testator then died under the circumstances existing at  
8 the date of its execution, but does not include any individual,  
9 merely because of such nomination, who acts as a witness to a  
10 will by which he or she is nominated as personal representative,  
11 conservator, guardian, or trustee.

12 (23) Issue of a person means all his or her lineal  
13 descendants of all generations, with the relationship of parent and  
14 child at each generation being determined by the definitions of  
15 child and parent contained in the Nebraska Probate Code.

16 (24) Lease includes an oil, gas, or other mineral lease.

17 (25) Letters include letters testamentary, letters  
18 of guardianship, letters of administration, and letters of  
19 conservatorship.

20 (26) Minor means an individual under nineteen years of  
21 age, but in case any person marries under the age of nineteen years  
22 his or her minority ends.

23 (27) Mortgage means any conveyance, agreement, or  
24 arrangement in which property is used as security.

25 (28) Nonresident decedent means a decedent who was  
26 domiciled in another jurisdiction at the time of his or her  
27 death.

1           (29) Notice means compliance with the requirements of  
2 notice pursuant to subdivisions (a)(1) and (a)(2) of section  
3 30-2220.

4           (30) Organization includes a corporation, government, or  
5 governmental subdivision or agency, business trust, estate, trust,  
6 partnership, limited liability company, or association, two or more  
7 persons having a joint or common interest, or any other legal  
8 entity.

9           (31) Parent includes any person entitled to take, or who  
10 would be entitled to take if the child died without a will, as  
11 a parent under the Nebraska Probate Code, by intestate succession  
12 from the child whose relationship is in question and excludes any  
13 person who is only a stepparent, foster parent, or grandparent.

14           (32) Person means an individual, a corporation, an  
15 organization, a limited liability company, or other legal entity.

16           (33) Personal representative includes executor,  
17 administrator, successor personal representative, special  
18 administrator, and persons who perform substantially the same  
19 function under the law governing their status.

20           (34) Petition means a written request to the court for an  
21 order after notice.

22           (35) Proceeding includes action at law and suit in  
23 equity, but does not include a determination of inheritance tax  
24 under Chapter 77, article 20, or estate tax apportionment as  
25 provided in sections 77-2108 to 77-2112.

26           (36) Property includes both real and personal property or  
27 any interest therein and means anything that may be the subject of

1 ownership.

2 (37) Protected person is as defined in section 30-2601.

3 (38) Protective proceeding is as defined in section  
4 30-2601.

5 (39) Registrar refers to the official of the court  
6 designated to perform the functions of registrar as provided in  
7 section 30-2216.

8 (40) Relative or relation of a person means all persons  
9 who are related to him or her by blood or legal adoption.

10 (41) Security includes any note, stock, treasury  
11 stock, bond, debenture, evidence of indebtedness, certificate  
12 of interest or participation in an oil, gas, or mining title  
13 or lease or in payments out of production under such a title  
14 or lease, collateral-trust certificate, transferable share,  
15 voting-trust certificate or, in general, any interest or instrument  
16 commonly known as a security, or any certificate of interest or  
17 participation, any temporary or interim certificate, receipt, or  
18 certificate of deposit for, or any warrant or right to subscribe to  
19 or purchase, any of the foregoing.

20 (42) Settlement, in reference to a decedent's estate,  
21 includes the full process of administration, distribution, and  
22 closing.

23 (43) Special administrator means a personal  
24 representative as described by sections 30-2457 to 30-2461.

25 (44) State includes any state of the United States, the  
26 District of Columbia, the Commonwealth of Puerto Rico, and any  
27 territory or possession subject to the legislative authority of the

1 United States.

2 (45) Successor personal representative means a  
3 personal representative, other than a special administrator,  
4 who is appointed to succeed a previously appointed personal  
5 representative.

6 (46) Successors mean those persons, other than creditors,  
7 who are entitled to property of a decedent under his or her will or  
8 the Nebraska Probate Code.

9 (47) Supervised administration refers to the proceedings  
10 described in Article 24, part 5.

11 (48) Testacy proceeding means a proceeding to establish a  
12 will or determine intestacy.

13 (49) Testator means the maker of a will.

14 (50) Trust includes any express trust, private or  
15 charitable, with additions thereto, wherever and however created.  
16 It also includes a trust created or determined by judgment or  
17 decree under which the trust is to be administered in the manner  
18 of an express trust. Trust excludes other constructive trusts,  
19 and it excludes resulting trusts, conservatorships, personal  
20 representatives, trust accounts as defined in Article 27, custodial  
21 arrangements pursuant to the Nebraska Uniform Transfers to Minors  
22 Act, business trusts providing for certificates to be issued  
23 to beneficiaries, common trust funds, voting trusts, security  
24 arrangements, liquidation trusts, and trusts for the primary  
25 purpose of paying debts, dividends, interest, salaries, wages,  
26 profits, pensions, or employee benefits of any kind, and any  
27 arrangement under which a person is nominee or escrowee for

1 another.

2 (51) Trustee includes an original, additional, or  
3 successor trustee, whether or not appointed or confirmed by court.

4 (52) Ward is as defined in section 30-2601.

5 (53) Will means any instrument, including any codicil or  
6 other testamentary instrument complying with sections 30-2326 to  
7 30-2338, which disposes of personal or real property, appoints  
8 a personal representative, conservator, guardian, or trustee,  
9 revokes or revises an earlier executed testamentary instrument,  
10 or encompasses any one or more of such objects or purposes.

11 Sec. 30. Section 30-2601, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 30-2601 Unless otherwise apparent from the context, in  
14 the Nebraska Probate Code:

15 (1) Incapacitated person means any person who is impaired  
16 by reason of mental illness, mental deficiency, physical illness  
17 or disability, chronic use of drugs, chronic intoxication, or  
18 other cause (except minority) to the extent that the person  
19 lacks sufficient understanding or capacity to make or communicate  
20 responsible decisions concerning himself or herself;

21 (2) A protective proceeding is a proceeding under the  
22 provisions of section 30-2630 to determine that a person cannot  
23 effectively manage or apply his or her estate to necessary ends,  
24 either because the person lacks the ability or is otherwise  
25 inconvenienced, or because the person is a minor, and to secure  
26 administration of the person's estate by a conservator or other  
27 appropriate relief;

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

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

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

9           (6) Limited guardianship means any guardianship which is  
10 not a full guardianship; ~~and-~~

11           (7) For purposes of article 26 of the Nebraska Probate  
12 Code, interested person means children, spouses, those persons  
13 who would be the heirs if the ward or person alleged to be  
14 incapacitated died without leaving a valid last will and testament  
15 who are adults and any trustee of any trust executed by the ward  
16 or person alleged to be incapacitated. The meaning as it relates  
17 to particular persons may vary from time to time and must be  
18 determined according to the particular purposes of, and matter  
19 involved in, any proceeding. If there are no persons identified as  
20 interested persons above, then interested person shall also include  
21 any person or entity named as a devisee in the most recently  
22 executed last will and testament of the ward or person alleged to  
23 be incapacitated.

24           Sec. 31. During the pendency of any proceeding under  
25 sections 30-2601 to 30-2661 after a guardian or conservator is  
26 appointed, upon application by any interested person or concerned  
27 individual and if the accompanying affidavit of such person or

1 his or her agent shows to the court that the ward's or protected  
2 person's safety, health, or financial welfare is at issue, the  
3 court may issue ex parte orders to address the situation. Ex parte  
4 orders issued under this section shall remain in full force and  
5 effect for no more than ten days or until a hearing is held  
6 thereon, whichever is earlier. Anyone who violates such order after  
7 service shall be guilty of a Class II misdemeanor.

8           Sec. 32. A person, except for a financial institution as  
9 that term is defined in subdivision (12) of section 8-101 or its  
10 officers, directors, employees, or agents or a trust company, who  
11 has been nominated for appointment as a guardian or conservator  
12 shall obtain the following checks and reports of the results and  
13 file such reports with the court at least ten days prior to the  
14 appointment hearing date, unless waived or modified by the court in  
15 the event the protected person requests an expedited hearing under  
16 section 30-2630.01:

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

19           (2) A check of the central register created in section  
20 28-718 for any history of the nominated guardian or conservator  
21 exhibiting behavior injurious to or which may endanger the health  
22 or morals of a child or adult; and

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

25           An order appointing a guardian or conservator shall not  
26 be signed by the judge until such reports have been filed with the  
27 court and reviewed by the judge. Such reports, or the lack thereof,

1 shall be certified either by affidavit or by obtaining a certified  
2 copy of the report. No reports or checks shall be required by  
3 the court upon the application of a petitioner for an emergency  
4 temporary guardianship or emergency temporary conservatorship. The  
5 court may waive the requirements of this section for good cause  
6 shown. Reports filed under this section shall not be disclosed or  
7 considered a public record.

8           Sec. 33. Section 30-2613, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10           30-2613 (1) A guardian of a minor has the powers and  
11 responsibilities of a parent who has not been deprived of custody  
12 of his or her minor and unemancipated child, except that a guardian  
13 is not legally obligated to provide from his or her own funds  
14 for the ward and is not liable to third persons by reason of  
15 the parental relationship for acts of the ward. In particular,  
16 and without qualifying the foregoing, a guardian has the following  
17 powers and duties:

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

21           (b) He or she may receive money payable for the support  
22 of the ward to the ward's parent, guardian or custodian under  
23 the terms of any statutory benefit or insurance system, or any  
24 private contract, devise, trust, conservatorship or custodianship.  
25 He or she also may receive money or property of the ward paid  
26 or delivered by virtue of section 30-2603. Any sums so received  
27 shall be applied to the ward's current needs for support, care



1 and education, except as provided in ~~subdivisions~~ subsections  
2 (2) and (3) of this section. He or she must exercise due care  
3 to conserve any excess for the ward's future needs unless a  
4 conservator has been appointed for the estate of the ward, in  
5 which case such excess shall be paid over at least annually to  
6 the conservator. Sums so received by the guardian are not to be  
7 used for compensation for his or her services except as approved by  
8 order of court. A guardian may institute proceedings to compel the  
9 performance by any person of a duty to support the ward or to pay  
10 sums for the welfare of the ward.

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

18 (d) A guardian must report the condition of his or her  
19 ward and of the ward's estate which has been subject to his or  
20 her possession or control, as ordered by court on petition of any  
21 person interested in the minor's welfare or as required by court  
22 rule, and upon termination of the guardianship settle his or her  
23 accounts with the ward or his or her legal representatives and pay  
24 over and deliver all of the estate and effects remaining in his or  
25 her hands or due from him or her on settlement to the person or  
26 persons who shall be lawfully entitled thereto.

27 (2) The appointment of a guardian for a minor shall

1 not relieve his or her parent or parents, liable for the support  
2 of such minor, from their obligation to provide for such minor.  
3 For the purposes of guardianship of minors, the application of  
4 guardianship income and principal after payment of debts and  
5 charges of managing the estate, in relationship to the respective  
6 obligations owed by fathers, mothers, and others, for the support,  
7 maintenance and education of the minor shall be:

8 (a) The income and property of the father and mother  
9 of the minor in such manner as they can reasonably afford,  
10 regard being had to the situation of the family and to all the  
11 circumstances of the case;

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

15 (c) The income and property of any other person having a  
16 legal obligation to support the minor, in such manner as the person  
17 can reasonably afford, regard being had to the situation of the  
18 person's family and to all the circumstances of the case; and

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

23 (3) Notwithstanding the provisions of subsection (2) of  
24 this section, the court may from time to time authorize the  
25 guardian to use so much of the guardianship income or principal,  
26 whether personal or real estate, as it may deem proper, considering  
27 all the circumstances of the minor and those liable for his or

1 her support, if it is shown that (a) an emergency exists which  
2 justifies an expenditure, or (b) a fund has been given to the minor  
3 for a special purpose and the court can, with reasonable certainty,  
4 ascertain such purpose.

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

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

11 Sec. 34. Section 30-2620, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 30-2620 (a) The court may appoint a guardian if it is  
14 satisfied by clear and convincing evidence that the person for  
15 whom a guardian is sought is incapacitated and that the appointment  
16 is necessary or desirable as the least restrictive alternative  
17 available for providing continuing care or supervision of the  
18 person of the person alleged to be incapacitated. If the court  
19 finds that a guardianship should be created, the guardianship shall  
20 be a limited guardianship unless the court finds by clear and  
21 convincing evidence that a full guardianship is necessary. If a  
22 limited guardianship is created, the court shall, at the time of  
23 appointment or later, specify the authorities and responsibilities  
24 which the guardian and ward, acting together or singly, shall have  
25 with regard to:

26 (1) Selecting the ward's place of abode within this state  
27 or, with court permission, outside of ~~without~~ this state;

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

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

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

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

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

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

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

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

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

1 guardianship, or the actions of the guardian on behalf of the ward.

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

5 Sec. 35. Section 30-2626, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 30-2626 (a) If a person alleged to be incapacitated has  
8 no guardian and an emergency exists, the court may, pending notice  
9 and hearing, exercise the power of a guardian or enter an ex parte  
10 order appointing a temporary guardian to address the emergency.  
11 The order and letters of temporary guardianship shall specify the  
12 powers and duties of the temporary guardian limiting the powers and  
13 duties to those necessary to address the emergency.

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

1 incapacitated at the hearing as provided in section 30-2619.

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

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

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

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

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

1 section.

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

14 (i) A temporary guardian may be removed at any time. A  
15 temporary guardian shall make any report the court requires, except  
16 that a temporary guardian shall not be required to provide the  
17 checks and reports under section 32 of this act. In other respects  
18 the provisions of the Nebraska Probate Code concerning guardians  
19 apply to temporary guardians.

20 Sec. 36. Section 30-2628, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22 30-2628 (a) Except as limited by an order entered  
23 pursuant to section 30-2620, a guardian of an incapacitated person  
24 has the same powers, rights, and duties respecting his or her  
25 the guardian's ward that a parent has respecting his or her the  
26 parent's unemancipated minor child, except that a guardian is not  
27 liable to third persons for acts of the ward solely by reason of

1 the parental relationship. In particular, and without qualifying  
2 the foregoing, a guardian has the following powers and duties,  
3 except as may be specified by order of the court:

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

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

26 (3) A guardian may give any consents or approvals  
27 that may be necessary to enable the ward to receive medical,



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

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

1           ~~(4)~~ (5) If no conservator for the estate of the ward has  
2 been appointed, ~~he or she~~ a guardian may:

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

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

14 must exercise care to conserve any excess for the ward's needs; and  
15           (iii) Exercise a settlor's powers with respect to  
16 revocation, amendment, or distribution of trust property when  
17 authorized by a court acting under the authority of subsection (f)  
18 of section 30-3854. In acting under the authority of subsection (f)  
19 of section 30-3854, the court shall proceed in the same manner as  
20 provided under subdivision (3) of section 30-2637.

21           ~~(5)~~ (6) A guardian is required to report the condition of  
22 his or her ward and of the estate which has been subject to ~~his~~  
23 ~~or her~~ the guardian's possession or control, at least every year  
24 and as required by the court or court rule. The court shall receive  
25 from any interested person, for a period of thirty days after the  
26 filing of the guardian's report, any comments with regard to the  
27 need for continued guardianship or amendment of the guardianship

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

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

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

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

26 Sec. 37. Section 30-2630.01, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

1                   30-2630.01 (a) If a person alleged to be in need  
2 of protection under section 30-2630 has no conservator and an  
3 emergency exists, the court may, pending notice and hearing,  
4 exercise the power of a conservator or enter an emergency  
5 protective order appointing a temporary conservator to address  
6 the emergency.

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

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

27                   (d) At the expedited hearing, the court may render a

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

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

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

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

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

27 Sec. 38. Section 30-2640, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           30-2640 The court may require a conservator to furnish  
3 a bond conditioned upon faithful discharge of all duties of the  
4 trust according to law, with sureties as it shall specify and  
5 may eliminate the requirement or decrease or increase the required  
6 amount of any such bond previously furnished. The amount of the  
7 bond may be fixed at the discretion of the court, but if not  
8 otherwise fixed by the court, the amount of the bond shall be  
9 in the amount of the aggregate capital value of the personal  
10 property of the estate in his or her control plus one year's  
11 estimated income from all sources minus the value of securities  
12 deposited under arrangements requiring an order of the court for  
13 their removal. The court, in lieu of sureties on a bond, may accept  
14 other security for the performance of the bond, including a pledge  
15 of securities or a mortgage of land. The court may consider the  
16 desires of the protected person as expressed in any written power  
17 of attorney in determining whether a bond shall be required and the  
18 amount thereof.

19           For estates with a net value of more than ten thousand  
20 dollars, the bond for a conservator shall be in the amount of  
21 the aggregate capital value of the personal property of the estate  
22 in the conservator's control plus one year's estimated income  
23 from all sources minus the value of securities and other assets  
24 deposited under arrangements requiring an order of the court for  
25 their removal. The bond of the conservator shall be conditioned  
26 upon the faithful discharge of all duties of the trust according  
27 to law, with sureties as the court shall specify. The court, in

1 lieu of sureties on a bond, may accept other security for the  
2 performance of the bond, including a pledge of securities or a  
3 mortgage of land owned by the conservator. For good cause shown,  
4 the court may eliminate the requirement of a bond or decrease or  
5 increase the required amount of any such bond previously furnished.  
6 The court shall not require a bond if the protected person executed  
7 a written, valid power of attorney that specifically nominates a  
8 guardian or conservator and specifically does not require a bond.  
9 The court shall consider as one of the factors of good cause,  
10 when determining whether a bond should be required and the amount  
11 thereof, the protected person's choice of any attorney in fact or  
12 alternative attorney in fact. No bond shall be required of any  
13 financial institution, as that term is defined in subdivision (12)  
14 of section 8-101, or any officer, director, employee, or agent of  
15 the financial institution serving as a conservator, or any trust  
16 company serving as a conservator.

17           Sec. 39. Section 30-2647, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19           30-2647 Within ~~ninety~~ thirty days after his appointment,  
20 every conservator shall prepare and file with the appointing  
21 court a complete inventory of the estate of the protected person  
22 together with his the conservator's oath or affirmation that ~~it~~  
23 the inventory is complete and accurate so far as he or she is  
24 informed. The conservator shall ~~provide~~ mail a copy thereof by  
25 first-class mail to the protected person, if he the protected  
26 person can be located, and has attained the age of fourteen  
27 years, and has ~~sufficient mental capacity to understand these~~

1 ~~matters,~~ and to any parent or guardian with whom the protected  
2 ~~person resides.~~ all other interested persons as defined in section  
3 30-2601. Every conservator shall file an updated inventory with the  
4 annual accounting required under section 30-2648. The conservator  
5 shall keep suitable records of his or her administration and  
6 exhibit the same on request of any interested person.

7           Sec. 40. Section 30-2648, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           30-2648 Every conservator must account to the court for  
10 his or her administration of the trust annually, upon his or  
11 her resignation or removal, and at such other times as the court  
12 may direct. On termination of the protected person's minority or  
13 disability, a conservator may account to the court, or ~~he~~ the  
14 conservator may account to the former protected person or ~~his~~  
15 the former protected person's personal representative. Subject to  
16 appeal or vacation within the time permitted, an order, made  
17 upon notice and hearing, allowing an intermediate account of a  
18 conservator, adjudicates as to ~~his~~ the conservator's liabilities  
19 concerning the matters considered in connection therewith; and an  
20 order, made upon notice and hearing, allowing a final account  
21 adjudicates as to all previously unsettled liabilities of the  
22 conservator to the protected person or ~~his~~ the protected person's  
23 successors relating to the conservatorship. In connection with  
24 any account, the court may require a conservator to submit to a  
25 physical check of the estate in his or her control, to be made in  
26 any manner the court may specify.

27           Sec. 41. Section 30-2655, Reissue Revised Statutes of



1 Nebraska, is amended to read:

2           30-2655 (a) The court may, at the time of appointment or  
3 later, limit the powers of a conservator otherwise conferred by  
4 sections 30-2653 and 30-2654, or previously conferred by the court,  
5 and may at any time relieve ~~him~~ the conservator of any limitation.  
6 If the court limits any power conferred on the conservator by  
7 section 30-2653 or 30-2654, the limitation shall be endorsed upon  
8 ~~his~~ the conservator's letters of appointment.

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

12           Sec. 42. The Revisor of Statutes shall assign sections 31  
13 and 32 of this act within Chapter 30, article 26, Part 1.

14           Sec. 43. This act becomes operative on January 1, 2012.

15           Sec. 44. Original sections 25-2708, 25-2911, 25-2943,  
16 30-1601, 30-2209, 30-2601, 30-2613, 30-2620, 30-2626, 30-2628,  
17 30-2630.01, 30-2640, 30-2647, 30-2648, and 30-2655, Reissue Revised  
18 Statutes of Nebraska, and section 30-2201, Revised Statutes  
19 Cumulative Supplement, 2010, are repealed.

20           2. On page 1, line 2, strike "30-2601.01," and insert  
21 "30-2209, 30-2601, "; in line 8 after the semicolon insert "to adopt  
22 the Nebraska Uniform Adult Guardianship and Protective Proceedings  
23 Jurisdiction Act;"; in line 10 after the semicolon insert "to  
24 harmonize provisions;"; and strike beginning with the second "to"  
25 in line 11 through the semicolon in line 12.