

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

## **LEGISLATIVE BILL 157**

Final Reading

Introduced by Coash, 27; Ashford, 20; Council, 11; Nelson, 6;  
Wightman, 36.

Read first time January 07, 2011

Committee: Judiciary

### A BILL

1 FOR AN ACT relating to guardianship and conservatorship; to amend  
2 sections 25-2708, 25-2911, 25-2943, 30-1601, 30-2209,  
3 30-2210, 30-2211, 30-2601, 30-2613, 30-2618, 30-2620,  
4 30-2626, 30-2628, 30-2629, 30-2630.01, 30-2632, 30-2640,  
5 30-2647, 30-2648, and 30-2655, Reissue Revised Statutes  
6 of Nebraska, and section 30-2201, Revised Statutes  
7 Cumulative Supplement, 2010; to provide for real estate  
8 filings, use of dispute resolution, duties for the State  
9 Court Administrator, and ex parte proceedings; to adopt  
10 the Nebraska Uniform Adult Guardianship and Protective  
11 Proceedings Jurisdiction Act; to provide and change  
12 duties for guardians and conservators; to provide a  
13 penalty; to harmonize provisions; to provide a duty for  
14 the Revisor of Statutes; to provide an operative date;  
15 and to repeal the original sections.

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

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

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

17                  This is to certify that there is pending in the county  
18 court of ..... County, a  
19 proceeding .....  
20 (describe proceeding and name of person involved)  
21 in which the following described real estate is involved,  
22 to wit:  
23 .....  
24 (describe real estate)  
25 .....

1                   County Judge

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

4                   25-2911 (1) The following types of cases may be accepted  
5 for dispute resolution at an approved center:

6                   (a) Civil claims and disputes, including, but not limited  
7 to, consumer and commercial complaints, disputes between neighbors,  
8 disputes between business associates, disputes between landlords and  
9 tenants, and disputes within communities;

10                  (b) Disputes concerning child custody, parenting time,  
11 visitation, or other access and other areas of domestic relations;  
12 and

13                  (c) Juvenile offenses and disputes involving juveniles;  
14 and .

15                  (d) Contested guardianship and contested conservatorship  
16 proceedings.

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

1      requests a copy of the agreement, the center shall provide it.

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

4                25-2943 A court may refer a civil case, including a  
5      contested guardianship or contested conservatorship proceeding, to  
6      mediation or another form of alternative dispute resolution and,  
7      unless otherwise ordered following a hearing upon a motion to object  
8      to such referral, may state a date for the case to return to court.  
9      Such date shall be no longer than ninety days after the date the  
10     order was signed unless the court grants an extension upon request of  
11     the parties. Any agreement or resolution made in mediation or another  
12     form of alternative dispute resolution shall be voluntarily entered  
13     into by the parties. An individual trial court, an appellate court,  
14     or the Supreme Court on its own initiative may adopt rules of  
15     practice governing the procedures for referral of cases to mediation  
16     and other forms of dispute resolution. Such services may be provided  
17     by approved centers on a sliding scale of fees under the Dispute  
18     Resolution Act.

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

21                30-1601 (1) In all matters arising under the Nebraska  
22      Probate Code and in all matters in county court arising under the  
23      Nebraska Uniform Trust Code, appeals may be taken to the Court of  
24      Appeals in the same manner as an appeal from district court to the  
25      Court of Appeals.

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

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

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

1 or remove the supersedeas or require the appealing party to deposit  
2 with the clerk of the court a bond or other security approved by the  
3 court in an amount and conditioned in accordance with sections  
4 30-2640 and 30-2641. Upon motion of any interested ~~party~~-person or  
5 upon the court's own motion, the county court may appoint a special  
6 guardian or conservator pending appeal 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 of  
11 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 the  
14 appellant shall pay the cost thereof, including an attorney's fee, to  
15 the adverse party in an amount fixed by the Court of Appeals, and any  
16 bond required under subsection (3) of this section shall be liable  
17 for the costs.

18 Sec. 5. Sections 5 to 27 of this act shall be known and  
19 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

1       administer the property of an adult, including a person appointed  
2       under the Nebraska Probate Code for an adult;

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

6               (4) Guardianship order means an order appointing a  
7       guardian;

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

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

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

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

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

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

1       property;

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

4               (12) Record means information that is inscribed on a  
5       tangible medium or that is stored in an electronic or other medium  
6       and is retrievable in perceivable form;

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

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

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

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

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

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

4               (a) Hold an evidentiary hearing;  
5               (b) Order a person in that state to produce evidence or  
6       give testimony pursuant to procedures of that state;  
7               (c) Order that an evaluation or assessment be made of the  
8       respondent;

9               (d) Order any appropriate investigation of a person  
10      involved in a proceeding;

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

17               (f) Issue any order necessary to assure the appearance in  
18      the proceeding of a person whose presence is necessary for the court  
19      to make a determination, including the respondent or the  
20      incapacitated or protected person; or

21               (g) Issue an order authorizing the release of medical,  
22      financial, criminal, or other relevant information in that state,  
23      including protected health information as defined in 45 C.F.R.  
24      160.103, as such regulation existed on January 1, 2011.

25               (2) If a court of another state in which a guardianship

1     or protective proceeding is pending requests assistance of the kind  
2     provided in subsection (1) of this section, a court of this state has  
3     jurisdiction for the limited purpose of granting the request or  
4     making reasonable efforts to comply with the request.

5                 Sec. 10. (1) In a guardianship or protective proceeding,  
6     in addition to other procedures that may be available, testimony of a  
7     witness who is located in another state may be offered by deposition  
8     or other means allowable in this state for testimony taken in another  
9     state. The court on its own motion may order that the testimony of a  
10    witness be taken in another state and may prescribe the manner in  
11    which and the terms upon which the testimony is to be taken.

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

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

22                 Sec. 11. (1) For purposes of sections 11 to 19 of this  
23    act:

24                 (a) Emergency means a circumstance that likely will  
25    result in substantial harm to a respondent's health, safety, or

1       welfare, and for which the appointment of a guardian is necessary  
2       because no other person has authority and is willing to act on the  
3       respondent's behalf;

4               (b) Home state means the state in which the respondent  
5       was physically present, including any period of temporary absence,  
6       for at least six consecutive months immediately before the filing of  
7       a petition for a protective order or the appointment of a guardian  
8       or, if none, the state in which the respondent was physically  
9       present, including any period of temporary absence, for at least six  
10      consecutive months ending within the six months prior to the filing  
11      of the petition; and

12               (c) Significant-connection state means a state, other  
13       than the home state, with which a respondent has a significant  
14       connection other than mere physical presence and in which substantial  
15       evidence concerning the respondent is available.

16               (2) In determining under section 13 of this act and  
17       subsection (5) of section 20 of this act whether a respondent has a  
18       significant connection with a particular state, the court shall  
19       consider:

20               (a) The location of the respondent's family and other  
21       persons required to be notified of the guardianship or protective  
22       proceeding;

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

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

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

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

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

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

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

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

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

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

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

24                  (iii) The court in this state concludes that it is an  
25 appropriate forum under the factors set forth in section 16 of this

1     act;

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

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

10                Sec. 14. (1) A court of this state lacking jurisdiction  
11     under section 13 of this act has special jurisdiction to do any of  
12     the following:

13                (a) Appoint a guardian in an emergency for a term not  
14     exceeding ninety days for a respondent who is physically present in  
15     this state;

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

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

22                (2) If a petition for the appointment of a guardian in an  
23     emergency is brought in this state and this state was not the  
24     respondent's home state on the date the petition was filed, the court  
25     shall dismiss the proceeding at the request of the court of the home

1       state, if any, whether dismissal is requested before or after the  
2       emergency appointment.

3           Sec. 15. Except as otherwise provided in section 14 of  
4       this act, a court that has appointed a guardian or issued a  
5       protective order consistent with the Nebraska Uniform Adult  
6       Guardianship and Protective Proceedings Jurisdiction Act has  
7       exclusive and continuing jurisdiction over the proceeding until it is  
8       terminated by the court or the appointment or order expires by its  
9       own terms.

10          Sec. 16. (1) A court of this state having jurisdiction  
11       under section 13 of this act to appoint a guardian or issue a  
12       protective order may decline to exercise its jurisdiction if it  
13       determines at any time that a court of another state is a more  
14       appropriate forum.

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

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

23           (a) Any expressed preference of the respondent;  
24           (b) Whether abuse, neglect, or exploitation of the  
25       respondent has occurred or is likely to occur and which state could

1     best protect the respondent from the abuse, neglect, or exploitation;  
2                 (c) The length of time the respondent was physically  
3     present in or was a legal resident of this or another state;  
4                 (d) The distance of the respondent from the court in each  
5     state;  
6                 (e) The financial circumstances of the respondent's  
7     estate;  
8                 (f) The nature and location of the evidence;  
9                 (g) The ability of the court in each state to decide the  
10    issue expeditiously and the procedures necessary to present evidence;  
11                 (h) The familiarity of the court of each state with the  
12    facts and issues in the proceeding; and  
13                 (i) If an appointment were made, the court's ability to  
14    monitor the conduct of the guardian or conservator.

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

19                 (a) Decline to exercise jurisdiction;  
20                 (b) Exercise jurisdiction for the limited purpose of  
21    fashioning an appropriate remedy to ensure the health, safety, and  
22    welfare of the respondent or the protection of the respondent's  
23    property or prevent a repetition of the unjustifiable conduct,  
24    including staying the proceeding until a petition for the appointment  
25    of a guardian or issuance of a protective order is filed in a court

1       of another state having jurisdiction; or

2               (c) Continue to exercise jurisdiction after considering:

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

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

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

12               (2) If a court of this state determines that it acquired  
13       jurisdiction to appoint a guardian or issued a protective order  
14       because a party seeking to invoke its jurisdiction engaged in  
15       unjustifiable conduct, it may assess against that party necessary and  
16       reasonable expenses, including attorney's fees, investigative fees,  
17       court costs, communication expenses, witness fees and expenses, and  
18       travel expenses. The court may not assess fees, costs, or expenses of  
19       any kind against this state or a governmental subdivision, agency, or  
20       instrumentality of this state unless authorized by law other than the  
21       Nebraska Uniform Adult Guardianship and Protective Proceedings  
22       Jurisdiction Act.

23               Sec. 18. If a petition for the appointment of a guardian  
24       or issuance of a protective order is brought in this state and this  
25       state was not the respondent's home state on the date the petition

1       was filed, in addition to complying with the notice requirements of  
2       this state, notice of the petition must be given to those persons who  
3       would be entitled to notice of the petition if a proceeding were  
4       brought in the respondent's home state. The notice must be given in  
5       the same manner as notice is required to be given in this state.

6                  Sec. 19. Except for a petition for the appointment of a  
7       guardian in an emergency or issuance of a protective order limited to  
8       property located in this state under subdivision (1)(a) or (b) of  
9       section 14 of this act, if a petition for the appointment of a  
10      guardian or issuance of a protective order is filed in this state and  
11      in another state and neither petition has been dismissed or  
12      withdrawn, the following rules apply:

13                   (1) If the court in this state has jurisdiction under  
14       section 13 of this act, it may proceed with the case unless a court  
15       in another state acquires jurisdiction under provisions similar to  
16       section 13 of this act before the appointment or issuance of the  
17       order; and

18                   (2) If the court in this state does not have jurisdiction  
19       under section 13 of this act, whether at the time the petition is  
20       filed or at any time before the appointment or issuance of the order,  
21       the court shall stay the proceeding and communicate with the court in  
22       the other state. If the court in the other state has jurisdiction,  
23       the court in this state shall dismiss the petition unless the court  
24       in the other state determines that the court in this state is a more  
25       appropriate forum.

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

4                   (2) Notice of a petition under subsection (1) of this  
5 section must be given to the persons that would be entitled to notice  
6 of a petition in this state for the appointment of a guardian or  
7 conservator.

8                   (3) On the court's own motion or on request of the  
9 guardian or conservator, the incapacitated or protected person, or  
10 other person required to be notified of the petition, the court shall  
11 hold a hearing on a petition filed pursuant to subsection (1) of this  
12 section.

13                   (4) The court shall issue an order provisionally granting  
14 a petition to transfer a guardianship and shall direct the guardian  
15 to petition for guardianship in the other state if the court is  
16 satisfied that the guardianship will be accepted by the court in the  
17 other state and the court finds that:

18                   (a) The incapacitated person is physically present in or  
19 is reasonably expected to move permanently to the other state;

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

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

1                   (5) The court shall issue a provisional order granting a  
2 petition to transfer a conservatorship and shall direct the  
3 conservator to petition for conservatorship in the other state if the  
4 court is satisfied that the conservatorship will be accepted by the  
5 court of the other state and the court finds that:

6                   (a) The protected person is physically present in or is  
7 reasonably expected to move permanently to the other state, or the  
8 protected person has a significant connection to the other state  
9 considering the factors in subsection (2) of section 11 of this act;

10                  (b) An objection to the transfer has not been made or, if  
11 an objection has been made, the objector has not established that the  
12 transfer would be contrary to the interests of the protected person;  
13 and

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

16                  (6) The court shall issue a final order confirming the  
17 transfer and terminating the guardianship or conservatorship upon its  
18 receipt of:

19                  (a) A provisional order accepting the proceeding from the  
20 court to which the proceeding is to be transferred which is issued  
21 under provisions similar to section 21 of this act; and

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

24                  Sec. 21. (1) To confirm transfer of a guardianship or  
25 conservatorship transferred to this state under provisions similar to

1     section 20 of this act, the guardian or conservator must petition the  
2     court in this state to accept the guardianship or conservatorship.  
3     The petition must include a certified copy of the other state's  
4     provisional order of transfer.

5                 (2) Notice of a petition under subsection (1) of this  
6     section must be given to those persons that would be entitled to  
7     notice if the petition were a petition for the appointment of a  
8     guardian or issuance of a protective order in both the transferring  
9     state and this state. The notice must be given in the same manner as  
10    notice is required to be given in this state.

11                 (3) On the court's own motion or on request of the  
12    guardian or conservator, the incapacitated or protected person, or  
13    other person required to be notified of the proceeding, the court  
14    shall hold a hearing on a petition filed pursuant to subsection (1)  
15    of this section.

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

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

21                     (b) The guardian or conservator is ineligible for  
22    appointment in this state.

23                 (5) The court shall issue a final order accepting the  
24    proceeding and appointing the guardian or conservator as guardian or  
25    conservator in this state upon its receipt from the court from which

1       the proceeding is being transferred of a final order issued under  
2       provisions similar to section 20 of this act transferring the  
3       proceeding to this state.

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

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

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

20           Sec. 22. If a guardian has been appointed in another  
21      state and a petition for the appointment of a guardian is not pending  
22      in this state, the guardian appointed in the other state, after  
23      giving notice to the appointing court of an intent to register, may  
24      register the guardianship order in this state by filing as a foreign  
25      judgment in a court, in any appropriate county of this state,

1       certified copies of the order and letters of office. If the  
2       incapacitated person does not have a conservator and has real  
3       property or an interest in real property in Nebraska, the guardian  
4       shall file in every county where such property is located as required  
5       by section 25-2708.

6               Sec. 23. If a conservator has been appointed in another  
7       state and a petition for a protective order is not pending in this  
8       state, the conservator appointed in the other state, after giving  
9       notice to the appointing court of an intent to register, may register  
10      the protective order in this state by filing as a foreign judgment in  
11      a court of this state, in every county in which property belonging to  
12      the protected person is located as required by section 25-2708,  
13      certified copies of the order and letters of office and of any bond.

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

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

25               Sec. 25. In applying and construing this uniform act,

1     consideration must be given to the need to promote uniformity of the  
2     law with respect to its subject matter among states that enact it.

3                 Sec. 26. The Nebraska Uniform Adult Guardianship and  
4     Protective Proceedings Jurisdiction Act modifies, limits, and  
5     supersedes the federal Electronic Signatures in Global and National  
6     Commerce Act, 15 U.S.C. 7001, as the act existed on January 1, 2011,  
7     but does not modify, limit, or supersede section 101(c) of the act,  
8     15 U.S.C. 7001(c), or authorize electronic delivery of any of the  
9     notices described in section 103(b) of the act, 15 U.S.C. 7003(b).

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

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

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

18                30-2201 Sections 30-2201 to 30-2902 and sections 5 to 27,  
19     33, and 34 of this act shall be known and may be cited as the  
20     Nebraska Probate Code.

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

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

1 Probate Code:

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

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

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

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

24                  (5) Court means the court or branch having jurisdiction  
25 in matters relating to the affairs of decedents. This court in this

1 state is known as county court or, for purposes of guardianship of a  
2 juvenile over which a separate juvenile court already has  
3 jurisdiction, the county court or separate juvenile court.

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

6 (7) Devise, when used as a noun, means a testamentary  
7 disposition of real or personal property and, when used as a verb,  
8 means to dispose of real or personal property by will.

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

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

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

18 (11) Distributee means any person who has received  
19 property of a decedent from his or her personal representative other  
20 than as a creditor or purchaser. A testamentary trustee is a  
21 distributee only to the extent of distributed assets or increment  
22 thereto remaining in his or her hands. A beneficiary of a  
23 testamentary trust to whom the trustee has distributed property  
24 received from a personal representative is a distributee of the  
25 personal representative. For purposes of this provision, testamentary

1 trustee includes a trustee to whom assets are transferred by will, to  
2 the extent of the devised assets.

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

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

9 (14) Fiduciary includes personal representative,  
10 guardian, conservator, and trustee.

11 (15) Foreign personal representative means a personal  
12 representative of another jurisdiction.

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

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

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

22 (19) Incapacitated person is as defined in section  
23 30-2601.

24 (20) Informal proceedings mean those conducted without  
25 notice to interested persons by an officer of the court acting as a

1    registrar for probate of a will or appointment of a personal  
2    representative.

3                 (21) Interested—Except for purposes of article 26 of the  
4   Nebraska Probate Code, interested person includes heirs, devisees,  
5   children, spouses, creditors, beneficiaries, and any others having a  
6   property right in or claim against a trust estate or the estate of a  
7   decedent, ward, or protected person which may be affected by the  
8   proceeding. It also includes persons having priority for appointment  
9   as personal representative, and other fiduciaries representing  
10   interested persons. The meaning as it relates to particular persons  
11   may vary from time to time and must be determined according to the  
12   particular purposes of, and matter involved in, any proceeding.

13                 (22) Interested witness to a will means any individual  
14   who acts as a witness to a will at the date of its execution and who  
15   is or would be entitled to receive any property thereunder if the  
16   testator then died under the circumstances existing at the date of  
17   its execution, but does not include any individual, merely because of  
18   such nomination, who acts as a witness to a will by which he or she  
19   is nominated as personal representative, conservator, guardian, or  
20   trustee.

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

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

1                             (25) Letters include letters testamentary, letters of  
2 guardianship, letters of administration, and letters of  
3 conservatorship.

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

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

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

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

13                             (30) Organization includes a corporation, government, or  
14 governmental subdivision or agency, business trust, estate, trust,  
15 partnership, limited liability company, or association, two or more  
16 persons having a joint or common interest, or any other legal entity.

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

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

24                             (33) Personal representative includes executor,  
25 administrator, successor personal representative, special

1 administrator, and persons who perform substantially the same  
2 function under the law governing their status.

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

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

9 (36) Property includes both real and personal property or  
10 any interest therein and means anything that may be the subject of  
11 ownership.

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

13 (38) Protective proceeding is as defined in section  
14 30-2601.

15 (39) Registrar refers to the official of the court  
16 designated to perform the functions of registrar as provided in  
17 section 30-2216.

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

20 (41) Security includes any note, stock, treasury stock,  
21 bond, debenture, evidence of indebtedness, certificate of interest or  
22 participation in an oil, gas, or mining title or lease or in payments  
23 out of production under such a title or lease, collateral-trust  
24 certificate, transferable share, voting-trust certificate or, in  
25 general, any interest or instrument commonly known as a security, or

any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

4 (42) Settlement, in reference to a decedent's estate,  
5 includes the full process of administration, distribution, and  
6 closing.

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

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

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

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

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

24 (50) Trust includes any express trust, private or  
25 charitable, with additions thereto, wherever and however created. It

1 also includes a trust created or determined by judgment or decree  
2 under which the trust is to be administered in the manner of an  
3 express trust. Trust excludes other constructive trusts, and it  
4 excludes resulting trusts, conservatorships, personal  
5 representatives, trust accounts as defined in Article 27, custodial  
6 arrangements pursuant to the Nebraska Uniform Transfers to Minors  
7 Act, business trusts providing for certificates to be issued to  
8 beneficiaries, common trust funds, voting trusts, security  
9 arrangements, liquidation trusts, and trusts for the primary purpose  
10 of paying debts, dividends, interest, salaries, wages, profits,  
11 pensions, or employee benefits of any kind, and any arrangement under  
12 which a person is nominee or escrowee for another.

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

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

16 (53) Will means any instrument, including any codicil or  
17 other testamentary instrument complying with sections 30-2326 to  
18 30-2338, which disposes of personal or real property, appoints a  
19 personal representative, conservator, guardian, or trustee, revokes  
20 or revises an earlier executed testamentary instrument, or  
21 encompasses any one or more of such objects or purposes.

22 Sec. 30. Section 30-2210, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 30-2210 Except as otherwise provided in this code, this  
25 code applies to (1) the affairs and estates of decedents, missing

1 persons, and persons to be protected, domiciled in this state, (2)  
2 the property of nonresidents located in this state or property coming  
3 into the control of a fiduciary who is subject to the laws of this  
4 state, (3) incapacitated persons and minors in this state, except as  
5 provided in the Nebraska Uniform Adult Guardianship and Protective  
6 Proceedings Jurisdiction Act, and (4) survivorship and related  
7 accounts in this state.

8 Sec. 31. Section 30-2211, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10 30-2211 (a) To the full extent permitted by the  
11 Constitution of Nebraska, the court has jurisdiction over all subject  
12 matter relating to (1) estates of decedents, including construction  
13 of wills and determination of heirs and successors of decedents, and  
14 estates of protected persons; and (2) protection of minors and  
15 incapacitated persons, except as provided in the Nebraska Uniform  
16 Adult Guardianship and Protective Proceedings Jurisdiction Act.

17 (b) The court has full power to make orders, judgments,  
18 and decrees and take all other action necessary and proper to  
19 administer justice in the matters which come before it.

20 Sec. 32. Section 30-2601, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

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

24 (1) Incapacitated person means any person who is impaired  
25 by reason of mental illness, mental deficiency, physical illness or

1     disability, chronic use of drugs, chronic intoxication, or other  
2     cause (except minority) to the extent that the person lacks  
3     sufficient understanding or capacity to make or communicate  
4     responsible decisions concerning himself or herself;

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

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

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

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

20                (6) Limited guardianship means any guardianship which is  
21    not a full guardianship; and -

22                (7) For purposes of article 26 of the Nebraska Probate  
23    Code, interested person means children, spouses, those persons who  
24    would be the heirs if the ward or person alleged to be incapacitated  
25    died without leaving a valid last will and testament who are adults

1     and any trustee of any trust executed by the ward or person alleged  
2     to be incapacitated. The meaning of interested person as it relates  
3     to particular persons may vary from time to time and must be  
4     determined according to the particular purposes of, and matter  
5     involved in, any proceeding. If there are no persons identified as  
6     interested persons above, then interested person shall also include  
7     any person or entity named as a devisee in the most recently executed  
8     last will and testament of the ward or person alleged to be  
9     incapacitated.

10               Sec. 33. During the pendency of any proceeding under  
11     sections 30-2601 to 30-2661 after a guardian or conservator is  
12     appointed, upon application by any interested person and if the  
13     accompanying affidavit of such person or his or her agent shows to  
14     the court that the ward's or protected person's safety, health, or  
15     financial welfare is at issue, the court may issue ex parte orders to  
16     address the situation. Ex parte orders issued under this section  
17     shall remain in full force and effect for no more than ten days or  
18     until a hearing is held thereon, whichever is earlier. Anyone who  
19     violates such order after service shall be guilty of a Class II  
20     misdemeanor. Any interested person that submits an affidavit under  
21     this section in bad faith, or submits an affidavit under this section  
22     that lacks a factual basis as determined by the court, shall be  
23     ordered to pay the opposing party reasonable attorney's fees and  
24     costs.

25               Sec. 34. (1) A person, except for a financial institution

1     as that term is defined in subdivision (12) of section 8-101 or its  
2     officers, directors, employees, or agents or a trust company, who has  
3     been nominated for appointment as a guardian or conservator shall  
4     obtain a national criminal history record check through a process  
5     approved by the State Court Administrator and a report of the results  
6     and file such report with the court at least ten days prior to the  
7     appointment hearing date, unless waived or modified by the court (a)  
8     for good cause shown by affidavit filed simultaneously with the  
9     petition for appointment or (b) in the event the protected person  
10    requests an expedited hearing under section 30-2630.01.

11               (2) An order appointing a guardian or conservator shall  
12    not be signed by the judge until such report has been filed with the  
13    court and reviewed by the judge. Such report, or the lack thereof,  
14    shall be certified either by affidavit or by obtaining a certified  
15    copy of the report. No report or national criminal history record  
16    check shall be required by the court upon the application of a  
17    petitioner for an emergency temporary guardianship or emergency  
18    temporary conservatorship. The court may waive the requirements of  
19    this section for good cause shown.

20               Sec. 35. Section 30-2613, Reissue Revised Statutes of  
21    Nebraska, is amended to read:

22               30-2613 (1) A guardian of a minor has the powers and  
23    responsibilities of a parent who has not been deprived of custody of  
24    his or her minor and unemancipated child, except that a guardian is  
25    not legally obligated to provide from his or her own funds for the

1      ward and is not liable to third persons by reason of the parental  
2      relationship for acts of the ward. In particular, and without  
3      qualifying the foregoing, a guardian has the following powers and  
4      duties:

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

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

24                (c) The guardian is empowered to facilitate the ward's  
25      education, social, or other activities and to authorize medical or

1 other professional care, treatment, or advice. A guardian is not  
2 liable by reason of this consent for injury to the ward resulting  
3 from the negligence or acts of third persons unless it would have  
4 been illegal for a parent to have consented. A guardian may consent  
5 to the marriage or adoption of his or her ward.

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

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

23 (a) The income and property of the father and mother of  
24 the minor in such manner as they can reasonably afford, regard being  
25 had to the situation of the family and to all the circumstances of

1 the case;

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

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

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

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

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

25 (5) A guardian shall not change a ward's place of abode

1     to a location outside of the State of Nebraska without court  
2     permission.

3                 Sec. 36. Section 30-2618, Reissue Revised Statutes of  
4     Nebraska, is amended to read:

5                 30-2618 ~~The~~ Unless otherwise provided in the Nebraska  
6     Uniform Adult Guardianship and Protective Proceedings Jurisdiction  
7     Act, the venue for guardianship proceedings for an incapacitated  
8     person is in the place where the incapacitated person resides or is  
9     present, or where property is located if he or she is a nonresident.  
10   If the incapacitated person is admitted to an institution pursuant to  
11   order of a court of competent jurisdiction, venue is also in the  
12   county in which that court sits.

13                Sec. 37. Section 30-2620, Reissue Revised Statutes of  
14     Nebraska, is amended to read:

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

1      ward, acting together or singly, shall have with regard to:

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

3          or, with court permission, outside of without—this state;

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

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

6                (4) Giving necessary consent, approval, or releases on

7      behalf of the ward;

8                (5) Arranging for training, education, or other

9      habilitating services appropriate for the ward;

10               (6) Applying for private or governmental benefits to

11      which the ward may be entitled;

12               (7) Instituting proceedings to compel any person under a

13      duty to support the ward or to pay sums for the welfare of the ward

14      to perform such duty, if no conservator has been appointed;

15               (8) Entering into contractual arrangements on behalf of

16      the ward, if no conservator has been appointed; and

17               (9) Receiving money and tangible property deliverable to

18      the ward and applying such money and property to the ward's expenses

19      for room and board, medical care, personal effects, training,

20      education, and habilitating services, if no conservator has been

21      appointed, or requesting the conservator to expend the ward's estate

22      by payment to third persons to meet such expenses.

23               (b) In a limited guardianship, the powers shall be

24      endorsed upon the letters of appointment of the guardian and shall be

25      treated as specific limitations upon the general powers, rights, and

1       duties accorded by law to the guardian. In a full guardianship, the  
2       letters of appointment shall specify that the guardian is granted all  
3       powers conferred upon guardians by law. After appointment, the ward  
4       may retain an attorney for the sole purpose of challenging the  
5       guardianship, the terms of the guardianship, or the actions of the  
6       guardian on behalf of the ward.

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

10               Sec. 38. Section 30-2626, Reissue Revised Statutes of  
11       Nebraska, is amended to read:

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

19               (b) When the court takes action to exercise the powers of  
20       a guardian or to appoint a temporary guardian under subsection (a) of  
21       this section, an expedited hearing shall be held if requested by the  
22       person alleged to be incapacitated, or by any interested ~~party,~~  
23       person, if the request is filed more than ten business days prior to  
24       the date set for the hearing on the petition for appointment of the  
25       guardian. If an expedited hearing is to be held, the hearing shall be

1 held within ten business days after the request is received. At the  
2 hearing on the temporary appointment, the petitioner shall have the  
3 burden of showing by a preponderance of the evidence that temporary  
4 guardianship continues to be necessary to address the emergency  
5 situation. Unless the person alleged to be incapacitated has counsel  
6 of his or her own choice, the court may appoint an attorney to  
7 represent the person alleged to be incapacitated at the hearing as  
8 provided in section 30-2619.

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

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

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

1                             (f) If the court denies the request for the ex parte  
2 order, the court may, in its discretion, enter an order for an  
3 expedited hearing pursuant to subsections (b) through (e) of this  
4 section.

5                             (g) If the petitioner requests the entry of an order of  
6 temporary guardianship pursuant to subsection (a) of this section  
7 without requesting an ex parte order, the court may hold an expedited  
8 hearing pursuant to subsections (b) through (e) of this section.

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

21                             (i) A temporary guardian may be removed at any time. A  
22 temporary guardian shall make any report the court requires, except  
23 that a temporary guardian shall not be required to provide the check  
24 or report under section 34 of this act. In other respects the  
25 provisions of the Nebraska Probate Code concerning guardians apply to

1 temporary guardians.

2 Sec. 39. Section 30-2628, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4 30-2628 (a) Except as limited by ~~an order entered~~  
5 pursuant to section 30-2620, a guardian of an incapacitated person  
6 has the same powers, rights, and duties respecting ~~his or her~~ the  
7 guardian's ward that a parent has respecting ~~his or her~~ the parent's  
8 unemancipated minor child, except that a guardian is not liable to  
9 third persons for acts of the ward solely by reason of the parental  
10 relationship. In particular, and without qualifying the foregoing, a  
11 guardian has the following powers and duties, except as may be  
12 specified by order of the court:

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

25 (2) If entitled to custody of his or her ward, ~~he or she~~

1     a guardian shall make provision for the care, comfort, and  
2     maintenance of his or her ward and, whenever appropriate, arrange for  
3     ~~his or her~~ the ward's training and education. Without regard to  
4     custodial rights of the ward's person, ~~he or she~~ a guardian shall  
5     take reasonable care of his or her ward's clothing, furniture,  
6     vehicles, and other personal effects and commence protective  
7     proceedings if other property of his or her ward is in need of  
8     protection.

9                         (3) A guardian may give any consents or approvals that  
10    may be necessary to enable the ward to receive medical, psychiatric,  
11    psychological, or other professional care, counsel, treatment, or  
12    service. When making such medical or psychiatric decisions, the  
13    guardian shall consider and carry out the intent of the ward  
14    expressed prior to incompetency to the extent allowable by law.  
15    Notwithstanding this provision or any other provision of the Nebraska  
16    Probate Code, the ward may authorize the release of financial,  
17    medical, and other confidential records pursuant to sections 20-161  
18    to 20-166.

19                         (4) If no conservator for the estate of the ward has been  
20    appointed, a guardian shall, within thirty days after appointment,  
21    prepare and file with the appointing court a complete inventory of  
22    the ward's estate together with the guardian's oath or affirmation  
23    that the inventory is complete and accurate so far as the guardian is  
24    informed. The guardian shall mail a copy thereof by first-class mail  
25    to the ward, if the ward can be located and has attained the age of

1       fourteen years, and to all other interested persons as defined in  
2       section 30-2601. The guardian shall keep suitable records of the  
3       guardian's administration and exhibit the same on request of any  
4       interested person. To the extent a guardian, who has not been named a  
5       conservator, has possession or control of the ward's estate, the  
6       guardian shall file with the court an updated inventory every year  
7       along with an affidavit of mailing showing that copies were sent to  
8       all interested persons and, if a bond has been required, to the  
9       bonding company by first-class mail along with a form to send back to  
10      the court that indicates if such person wants to continue receiving  
11      notifications about the proceedings.

12               (4) (5) If no conservator for the estate of the ward has  
13      been appointed, ~~he or she~~ a guardian may:

14                (i) Institute proceedings to compel any person under a  
15      duty to support the ward or to pay sums for the welfare of the ward  
16      to perform ~~his or her~~ such person's duty;  
17                (ii) Receive money and tangible property deliverable to  
18      the ward and apply the money and property for support, care, and  
19      education of the ward; but ~~he or she~~ a guardian may not use funds  
20      from his or her ward's estate for room and board which ~~he or she~~, his  
21      ~~or her~~ the guardian or the guardian's spouse, parent, or child has  
22      furnished the ward unless a charge for the service is approved by  
23      order of the court made upon notice to at least one of the next of  
24      kin of the ward, if notice is possible. ~~He or she~~ A guardian must  
25      exercise care to conserve any excess for the ward's needs; and

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

(5)-(6) A guardian is required to report the condition of his or her ~~the guardian's~~ possession or control, at least every year and as required by the court or court rule. The court shall receive from any interested person, for a period of thirty days after the filing of the guardian's report, any comments with regard to the need for continued guardianship or amendment of the guardianship order. If the court has reason to believe that additional rights should be returned to the ward or assigned to the guardian, the court shall set a date for a hearing and may provide all protections as set forth for the original finding of incapacity and appointment of a guardian.

18                         ~~(6)~~(7) If a conservator has been appointed, all of the  
19 ward's estate received by the guardian in excess of those funds  
20 expended to meet current expenses for support, care, and education of  
21 the ward must be paid to the conservator for management as provided  
22 in the Nebraska Probate Code, and the guardian must account to the  
23 conservator for funds expended.

1 entitled to receive reasonable sums for his or her the guardian's  
2 services and for room and board furnished to the ward as agreed upon  
3 between him or her the guardian and the conservator, provided if the  
4 amounts agreed upon are reasonable under the circumstances. The  
5 guardian may request the conservator to expend the ward's estate by  
6 payment to third persons or institutions for the ward's care and  
7 maintenance.

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

13 Sec. 40. Section 30-2629, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15 30-2629 (a) The Unless otherwise provided in the Nebraska  
16 Uniform Adult Guardianship and Protective Proceedings Jurisdiction  
17 Act, the court where the ward resides has concurrent jurisdiction  
18 with the court which appointed the guardian, or in which acceptance  
19 of a testamentary appointment was filed, over resignation, removal,  
20 accounting, and other proceedings relating to the guardianship.

21 (b) If Unless otherwise provided in the Nebraska Uniform  
22 Adult Guardianship and Protective Proceedings Jurisdiction Act, if  
23 the court located where the ward resides is not the court in which  
24 acceptance of appointment is filed, the court in which proceedings  
25 subsequent to appointment are commenced shall in all appropriate

1 cases notify the other court, in this or another state, and after  
2 consultation with that court determine whether to retain jurisdiction  
3 or transfer the proceedings to the other court, whichever may be in  
4 the best interest of the ward. A copy of any order accepting a  
5 resignation or removing a guardian shall be sent to the court in  
6 which acceptance of appointment is filed.

7 (c) Any action or proposed action by a guardian may be  
8 challenged at any time by any interested person.

9 Sec. 41. Section 30-2630.01, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 30-2630.01 (a) If a person alleged to be in need of  
12 protection under section 30-2630 has no conservator and an emergency  
13 exists, the court may, pending notice and hearing, exercise the power  
14 of a conservator or enter an emergency protective order appointing a  
15 temporary conservator to address the emergency.

16 (b) When the court takes action to exercise the powers of  
17 a conservator or to appoint a temporary conservator under subsection  
18 (a) of this section, an expedited hearing shall be held if requested  
19 by the person alleged to be in need of protection, or by any  
20 interested party, person, if the request is filed more than ten  
21 business days prior to the date set for the hearing on the petition  
22 for appointment of the conservator. If an expedited hearing is to be  
23 held, the hearing shall be held within ten business days after the  
24 request is received. At the hearing on the temporary appointment, the  
25 petitioner shall have the burden of showing by a preponderance of the

1       evidence that temporary conservatorship continues to be necessary to  
2       address the emergency situation. Unless the person alleged to be in  
3       need of protection has counsel of his or her own choice, the court  
4       may appoint an attorney to represent the person at the hearing as  
5       provided in section 30-2636.

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

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

17                  (e) The temporary conservatorship shall terminate at the  
18      end of the ninety-day period in which the temporary conservatorship  
19      is valid or at any time prior thereto if the court deems the  
20      circumstances leading to the order for temporary conservatorship no  
21      longer exist or if an order has been entered as a result of a hearing  
22      pursuant to section 30-2636 which has been held during the ninety-day  
23      period.

24                  (f) If the court denies the request for the ex parte  
25      order, the court may, in its discretion, enter an order for an

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

3                     (g) If the petitioner requests the entry of an order of  
4       temporary conservatorship pursuant to subsection (a) of this section  
5       without requesting an ex parte order, the court may hold an expedited  
6       hearing pursuant to subsections (b) through (e) of this section.

7                     (h) A temporary conservator may be removed at any time. A  
8       temporary conservator shall make any report the court requires,  
9       except that a temporary conservator shall not be required to provide  
10      the national criminal history record check and report under section  
11      34 of this act. In other respects the provisions of the Nebraska  
12      Probate Code concerning conservators apply to temporary conservators.

13                  Sec. 42. Section 30-2632, Reissue Revised Statutes of  
14       Nebraska, is amended to read:

15                  30-2632 Venue—Unless otherwise provided in the Nebraska  
16      Uniform Adult Guardianship and Protective Proceedings Jurisdiction  
17      Act, venue for proceedings under this part is:

18                  (1) In the place in this state where the person to be  
19       protected resides whether or not a guardian has been appointed in  
20       another place; or

21                  (2) If the person to be protected does not reside in this  
22       state, in any place where he or she has property.

23                  Sec. 43. Section 30-2640, Reissue Revised Statutes of  
24       Nebraska, is amended to read:

25                  30-2640 ~~The court may require a conservator to furnish a~~

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

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

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

15               Sec. 44. Section 30-2647, Reissue Revised Statutes of  
16   Nebraska, is amended to read:

17               30-2647 Within ninety thirty days after his appointment,  
18   every conservator shall prepare and file with the appointing court a  
19   complete inventory of the estate of the protected person together  
20   with his—the conservator's oath or affirmation that it—the inventory  
21   is complete and accurate so far as he or she is informed. The  
22   conservator shall provide mail a copy thereof by first-class mail to  
23   the protected person, if he—the protected person can be located, and  
24   has attained the age of fourteen years, and has sufficient mental  
25   capacity to understand these matters, and to any parent or guardian

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

7                          Sec. 45. 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 her  
11       resignation or removal, and at such other times as the court may  
12       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—the  
15       former protected person's personal representative. Subject to appeal  
16       or vacation within the time permitted, an order, made upon notice and  
17       hearing, allowing an intermediate account of a conservator,  
18       adjudicates as to his—the conservator's liabilities concerning the  
19       matters considered in connection therewith; and an order, made upon  
20       notice and hearing, allowing a final account adjudicates as to all  
21       previously unsettled liabilities of the conservator to the protected  
22       person or his—the protected person's successors relating to the  
23       conservatorship. In connection with any account, the court may  
24       require a conservator to submit to a physical check of the estate in  
25       his or her control, to be made in any manner the court may specify.

1                   Sec. 46. Section 30-2655, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

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

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

13                  Sec. 47. The Revisor of Statutes shall assign sections 33  
14 and 34 of this act within Chapter 30, article 26, Part 1.

15                  Sec. 48. This act becomes operative on January 1, 2012.

16                  Sec. 49. Original sections 25-2708, 25-2911, 25-2943,  
17 30-1601, 30-2209, 30-2210, 30-2211, 30-2601, 30-2613, 30-2618,  
18 30-2620, 30-2626, 30-2628, 30-2629, 30-2630.01, 30-2632, 30-2640,  
19 30-2647, 30-2648, and 30-2655, Reissue Revised Statutes of Nebraska,  
20 and section 30-2201, Revised Statutes Cumulative Supplement, 2010,  
21 are repealed.