

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 268

Introduced by Schumacher, 22; Kintner, 2.

Read first time January 11, 2017

Committee: Judiciary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 have not established separate juvenile courts;

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

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

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

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

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

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

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

20 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 violation of environmental law;

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

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

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

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

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

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

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

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

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

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

1 beneficiary's benefit, or by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 medical assistance as defined in subdivision (4)(b) of section 68-919.

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

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

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

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

26 (a) Related transferee means:

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

29 (ii) An entity controlled by one or more individuals described in
30 subdivision (1)(a)(i) of this section. For purposes of this subdivision,
31 control means individuals described in subdivision (1)(a)(i) of this

1 section together own or have the option to acquire more than fifty
2 percent of the entity; or

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

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

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

29 (3) Within fifteen days after receipt of a statement required by
30 section 76-214 indicating that the underlying real estate transfer was
31 between relatives or, if to a trustee, where the trustor or settlor and

1 the beneficiary are relatives, the register of deeds shall send a copy of
2 such statement, together with the parcel identification number, if
3 ascertainable, to the department. The copy shall be provided to the
4 department in a delivery manner and at an address designated by the
5 department, which manner may include email. The department shall post the
6 acceptable manner of delivering the copy on its web site or otherwise
7 communicate the manner of delivery to the registers of deeds.

8 (4) The lien imposed by subsection (2) of this section becomes
9 effective upon the filing of a notice of lien in accordance with this
10 subsection. The department may file a notice of the lien imposed by
11 subsection (2) of this section only after the department receives an
12 application for medical assistance on behalf of a transferor. The notice
13 must be filed in the office of the register of deeds of the county or
14 counties in which the real estate subject to the lien is located. The
15 notice must provide the legal description of the real estate subject to
16 the lien, specify the amount then secured by the lien, and indicate that
17 the lien also covers any future medical assistance provided to the
18 transferor. The department shall provide the register of deeds with a
19 self-addressed return envelope bearing sufficient postage for purposes of
20 returning to the department a file-stamped copy of the notice of lien,
21 which the register of deeds shall mail to the department. The lien is not
22 valid against the owner of an interest in real estate received by a
23 grantee who is not a related transferee pursuant to a deed or other
24 instrument if such deed or other instrument is filed prior to the notice
25 of lien. A lien that is not valid under this subsection shall be released
26 by the department upon notice thereof from such grantee or a subsequent
27 bona fide purchaser. A lien is valid against any subsequent creditor only
28 if notice of such lien has been filed by the department in accordance
29 with this subsection. Any mortgage or trust deed recorded prior to the
30 filing of a notice of lien shall have priority over such lien. Except as
31 provided in subsection (5) of this section, any optional future advance

1 or advance necessary to protect the security secured by the mortgage or
2 trust deed shall have the same priority as the mortgage or trust deed.

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

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

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

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

24 (b) For purposes of this subsection:

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

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

29 (iii) Growth factor means the actual value of the real estate at the
30 time the lien is enforced divided by the actual value of the real estate
31 at the time the consideration was paid.

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

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

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

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

29 (i) Notice delivered to the department, by certified mail, return
30 receipt requested, of (A) the death and identification, including the
31 social security number, of the transferor, (B) the legal description of

1 the real estate subject to the indemnity or lien, and (C) the names and
2 addresses of the owners of record of the real estate; and

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

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

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

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

20 Sec. 14. Section 68-919, Revised Statutes Cumulative Supplement,
21 2016, is amended to read:

22 68-919 (1) The recipient of medical assistance under the medical
23 assistance program shall be indebted to the department for the total
24 amount paid for medical assistance on behalf of the recipient if:

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

27 (b) The recipient resided in a medical institution and, at the time
28 of institutionalization or application for medical assistance, whichever
29 is later, the department determines that the recipient could not have
30 reasonably been expected to be discharged and resume living at home. For
31 purposes of this section, medical institution means a nursing facility,

1 an intermediate care facility for persons with developmental
2 disabilities, or an inpatient hospital.

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

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

24 (4)(a) This subsection applies to the fullest extent permitted by 42
25 U.S.C. 1396p, as such section existed on January 1, 2017. It is the
26 intent of the Legislature that the debt specified in subsection (1) of
27 this section be collected by the department before any portion of the
28 estate of a recipient of medical assistance is enjoyed by or transferred
29 to a person not specified in subsection (2) of this section as a result
30 of the death of such recipient. The debt may be recovered from the estate
31 of a recipient of medical assistance. 7

1 (b) For purposes of this section:

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

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

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

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

31 (A) Insurance policies in proportion to the premiums and other

1 payments to the insurance carrier that were paid by someone other than
2 the recipient of medical assistance or the recipient's spouse;

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

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

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

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

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

1 for reimbursement is made as to some, but not all, nonprobate transferees
2 or assets, the party or owner against whom the claim is asserted may seek
3 equitable contribution toward the claim from the other nonprobate
4 transferees or assets in a court of applicable jurisdiction. Except as
5 otherwise provided in this section and except for the right of the
6 department to recover the debt from such interests in property, this
7 subsection in and of itself does not create any rights in any other
8 person or entity.

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

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

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

1 authority of a personal representative with respect to the trust assets,
2 including, but not limited to, the authority to seek and to obtain from
3 the department information protected by applicable privacy law, and the
4 department shall release the information requested to the trustee to the
5 extent it is relevant to resolving issues relating to reimbursement of
6 medical assistance or the administration thereof.

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

22 (g) The debt created under subsection (1) of this section shall be
23 subject to the limitation on actions provided in section 25-206. The
24 cause of action accrues on the later of the death of the recipient of
25 medical assistance or the death of the recipient's spouse, if any.

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

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

5 (7) Whenever the department has provided medical assistance because
6 of sickness or injury to any person resulting from a third party's
7 wrongful act or negligence and the person has recovered or may recover
8 damages from such third party, to the fullest extent permitted by federal
9 law and understandings entered into between the state and federal
10 government, the department shall have the right to recover the medical
11 assistance it paid from any amounts that the person has received or may
12 receive from or on behalf of the third party. When, with the consent of
13 the department, an action or claim is brought by the person alone and the
14 person incurs or will incur a personal liability to pay attorney's fees
15 and costs of litigation or costs incurred in pursuit of a claim, to the
16 fullest extent permitted by federal law and understandings entered into
17 between the state and federal government, the department's claim for
18 reimbursement of the medical assistance provided to the person shall be
19 reduced by twenty-five percent of the full amount of the judgment, award,
20 or settlement, which the person may retain, though otherwise subject to
21 applicable law including but not limited to eligibility criteria, and a
22 pro rata share that represents the department's reasonable share of
23 attorney's fees paid by the person and that portion of the costs of
24 litigation or the costs incurred in pursuit of a claim determined by
25 multiplying the amount of the costs of litigation or the costs incurred
26 in pursuit of a claim by the ratio of the full amount of benefit
27 expenditures made by the department to or on behalf of the person to the
28 full amount of the judgment, award, or settlement. The department may not
29 unreasonably withhold consent to the bringing of such action or claim.
30 The department shall determine whether or not to grant such consent
31 within thirty days after the consent is requested. If the department

1 fails to make a determination within the thirty-day period, such consent
2 shall be deemed to have been granted.

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

5 Sec. 15. Section 71-605, Revised Statutes Cumulative Supplement,
6 2016, is amended to read:

7 71-605 (1) The funeral director and embalmer in charge of the
8 funeral of any person dying in the State of Nebraska shall cause a
9 certificate of death to be filled out with all the particulars contained
10 in the standard form adopted and promulgated by the department. Such
11 standard form shall include a space for veteran status and the period of
12 service in the armed forces of the United States and a statement of the
13 cause of death made by a person holding a valid license as a physician,
14 physician assistant, or nurse practitioner who last attended the
15 deceased. The standard form shall also include the deceased's social
16 security number and a notice that, pursuant to section 30-2413, demands
17 for notice which may affect the estate of the deceased are filed with the
18 county court in the county where the decedent resided at the time of
19 death. Death and fetal death certificates shall be completed by the
20 funeral directors and embalmers and physicians, physician assistants, or
21 nurse practitioners for the purpose of filing with the department and
22 providing child support enforcement information pursuant to section
23 43-3340.

24 (2) The physician, physician assistant, or nurse practitioner shall
25 have the responsibility and duty to complete and sign by electronic means
26 pursuant to section 71-603.01, within twenty-four hours from the time of
27 death, that part of the certificate of death entitled medical certificate
28 of death. In the case of a death when no person licensed as a physician,
29 physician assistant, or nurse practitioner was in attendance, the funeral
30 director and embalmer shall refer the case to the county attorney who
31 shall have the responsibility and duty to complete and sign the death

1 certificate by electronic means pursuant to section 71-603.01.

2 No cause of death shall be certified in the case of the sudden and
3 unexpected death of a child between the ages of one week and three years
4 until an autopsy is performed at county expense by a qualified
5 pathologist pursuant to section 23-1824. The parents or guardian shall be
6 notified of the results of the autopsy by their physician, physician
7 assistant, nurse practitioner, community health official, or county
8 coroner within forty-eight hours. The term sudden infant death syndrome
9 shall be entered on the death certificate as the principal cause of death
10 when the term is appropriately descriptive of the pathology findings and
11 circumstances surrounding the death of a child.

12 If the circumstances show it possible that death was caused by
13 neglect, violence, or any unlawful means, the case shall be referred to
14 the county attorney for investigation and certification. The county
15 attorney shall, within twenty-four hours after taking charge of the case,
16 state the cause of death as ascertained, giving as far as possible the
17 means or instrument which produced the death. All death certificates
18 shall show clearly the cause, disease, or sequence of causes ending in
19 death. If the cause of death cannot be determined within the period of
20 time stated above, the death certificate shall be filed to establish the
21 fact of death. As soon as possible thereafter, and not more than six
22 weeks later, supplemental information as to the cause, disease, or
23 sequence of causes ending in death shall be filed with the department to
24 complete the record. For all certificates stated in terms that are
25 indefinite, insufficient, or unsatisfactory for classification, inquiry
26 shall be made to the person completing the certificate to secure the
27 necessary information to correct or complete the record.

28 (3) A completed death certificate shall be filed with the department
29 within five business days after the date of death. If it is impossible to
30 complete the certificate of death within five business days, the funeral
31 director and embalmer shall notify the department of the reason for the

1 delay and file the certificate as soon as possible. Within ten days after
2 the filing of the certificate of death and prior to the issuance of any
3 certified copies of the certificate of death, the department shall search
4 its records to determine if the deceased had applied for or received
5 medical assistance under the Medical Assistance Act. If the deceased made
6 such application or received such assistance, the department shall,
7 before or contemporaneously with the issuance of the first certified copy
8 of the certificate of death, file a demand for notice pursuant to section
9 30-2413 in the county court of the county in which the decedent was
10 domiciled at the time of death. The department shall annually report the
11 following to the Legislature:

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

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

17 (4) Before any dead human body may be cremated, a cremation permit
18 shall first be signed electronically by the county attorney, or by his or
19 her authorized representative as designated by the county attorney in
20 writing, of the county in which the death occurred on an electronic form
21 prescribed and furnished by the department.

22 (5) A permit for disinterment shall be required prior to
23 disinterment of a dead human body. The permit shall be issued by the
24 department to a licensed funeral director and embalmer upon proper
25 application. The request for disinterment shall be made by the person
26 listed in section 30-2223 or a county attorney on a form furnished by the
27 department. The application shall be signed by the funeral director and
28 embalmer who will be directly supervising the disinterment. When the
29 disinterment occurs, the funeral director and embalmer shall sign the
30 permit giving the date of disinterment and file the permit with the
31 department within ten days of the disinterment.

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

11 (7) No dead human body shall be removed from the state for final
12 disposition without a transit permit issued by the funeral director and
13 embalmer having charge of the body in Nebraska, except that when the
14 death is subject to investigation, the transit permit shall not be issued
15 by the funeral director and embalmer without authorization of the county
16 attorney of the county in which the death occurred. No agent of any
17 transportation company shall allow the shipment of any body without the
18 properly completed transit permit prepared in duplicate.

19 (8) The interment, disinterment, or reinterment of a dead human body
20 shall be performed under the direct supervision of a licensed funeral
21 director and embalmer, except that hospital disposition may be made of
22 the remains of a child born dead pursuant to section 71-20,121.

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

28 Sec. 16. Section 77-2018.02, Revised Statutes Cumulative Supplement,
29 2016, is amended to read:

30 77-2018.02 (1) In the absence of any proceeding brought under
31 Chapter 30, article 24 or 25, in this state, proceedings for the

1 determination of the tax may be instituted in the county court of the
2 county where the property or any part thereof which might be subject to
3 tax is situated.

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

11 (3) The notice, provided for by subsection (2) of this section,
12 shall be given by one publication in a legal newspaper of the county or,
13 in the absence of such legal newspaper, then in a legal newspaper of some
14 adjoining county of general circulation in the county. In addition to
15 such publication of notice, personal service of notice of the hearing
16 shall be had upon the county attorney of each county in which the
17 property described in the petition is located, at least one week prior to
18 the hearing.

19 (4) If it appears to the county court, upon the filing of the
20 petition, by any person other than the county attorney, that no
21 assessment of inheritance tax could result, it shall forthwith enter
22 thereon an order directing the county attorney to show cause, within one
23 week from the service thereof, why determination should not be made that
24 no inheritance tax is due on account of the property described in the
25 petition and the potential lien thereof on such property extinguished.
26 Upon service of such order to show cause and failure of such showing by
27 the county attorney, notice of such hearing by publication shall be
28 dispensed with, and the petitioner shall be entitled without delay to a
29 determination of no tax due on account of the property described in the
30 petition, and any potential lien shall be extinguished.

31 (5) If it appears to the county court that (a) the county attorney

1 of each county in which the property described in the petition is located
2 has executed a waiver of notice upon him or her to show cause, or of the
3 time and place of hearing, and has entered a voluntary appearance in such
4 proceeding in behalf of the county and the State of Nebraska, and (b)
5 either (i) all persons against whom an inheritance tax may be assessed
6 are either a petitioner or have executed a waiver of notice upon them to
7 show cause, or of the time and place of hearing, and have entered a
8 voluntary appearance, or (ii) a party to the proceeding has agreed to pay
9 to the proper counties the full inheritance tax so determined, the court
10 may dispense with the notice provided for in subsections (2) and (3) of
11 this section and proceed without delay to make a determination of
12 inheritance tax, if any, due on account of the property described in the
13 petition.

14 (6) If the decedent was fifty-five years of age or older or resided
15 in a medical institution as defined in subsection (1) of section 68-919,
16 a notice of the filing of the petition referred to in subsection (1) of
17 this section shall be provided ~~mailed~~ to the Department of Health and
18 Human Services with the decedent's social security number and, if the
19 decedent was predeceased by a spouse available upon reasonable
20 investigation, the name and social security number of ~~the decedent's~~
21 ~~spouse if such spouse is deceased~~. A certificate of the providing mailing
22 of the notice to the department shall be filed in the inheritance tax
23 proceedings by an attorney for the petitioner or, if there is no
24 attorney, by the petitioner, prior to the entry of an order pursuant to
25 this section. The notice shall be provided to the department in a
26 delivery manner and at an address designated by the department, which
27 manner may include email. The department shall post the acceptable manner
28 of delivering notice on its web site. Any notice that fails to conform
29 with such manner is void and constitutes neither notice to the department
30 nor a waiver application for purposes of any statute or regulation that
31 requires that a notice or waiver application be provided to the

1 department.

2 Sec. 17. Section 77-3903, Revised Statutes Cumulative Supplement,
3 2016, is amended to read:

4 77-3903 (1)(a) A notice of lien provided for in the Uniform State
5 Tax Lien Registration and Enforcement Act upon real property shall be
6 presented in the office of the Secretary of State. Such notice of lien
7 shall be transmitted by the Secretary of State to and filed in the office
8 of the register of deeds by the register of deeds of the county or
9 counties in which the real property subject to the lien is situated as
10 designated in the notice of lien. The register of deeds shall enter the
11 notice in the alphabetical state tax lien index, showing on one line the
12 name and residence of the person liable named in such notice, the last
13 four digits of the social security number or the federal tax
14 identification number of such person, the Tax Commissioner's or
15 Commissioner of Labor's serial number of such notice, the date and hour
16 of filing, and the amount due. Such presentments to the Secretary of
17 State may be made by direct input to the Secretary of State's data base
18 or by other electronic means. All such notices of lien shall be retained
19 in numerical order in a file designated state tax lien notices, except
20 that in offices filing by the roll form of microfilm pursuant to section
21 23-1517.01, the original notices need not be retained. A lien subject to
22 this subsection shall be effective upon real property when filed by the
23 register of deeds as provided in this subsection.

24 (b) A notice of lien provided for in the Uniform State Tax Lien
25 Registration and Enforcement Act upon personal property shall be filed in
26 the office of the Secretary of State. The Secretary of State shall enter
27 the notice in the state's central tax lien index, showing on one line the
28 name and residence of the person liable named in such notice, the last
29 four digits of the social security number or the federal tax
30 identification number of such person, the Tax Commissioner's or
31 Commissioner of Labor's serial number of such notice, the date and hour

1 of filing, and the amount due. Such filings with the Secretary of State
2 may be filed by direct input to the Secretary of State's data base or by
3 other electronic means. All such notices of lien shall be retained in
4 numerical order in a file designated state tax lien notices.

5 ~~(2) (2)(a) This subdivision applies until January 1, 2018.~~ The
6 uniform fee, payable to the Secretary of State, for presenting for
7 filing, releasing, continuing, or subordinating or for filing, releasing,
8 continuing, or subordinating each tax lien pursuant to the Uniform State
9 Tax Lien Registration and Enforcement Act shall be two times the fee
10 required for recording instruments with the register of deeds as provided
11 in section 33-109. There shall be no fee for the filing of a termination
12 statement. The uniform fee for each county more than one designated
13 pursuant to subdivision (1)(a) of this section shall be the fee required
14 for recording instruments with the register of deeds as provided in
15 section 33-109. The Secretary of State shall deposit each fee received
16 pursuant to this subsection ~~subdivision~~ in the Uniform Commercial Code
17 Cash Fund. Of the fees received and deposited pursuant to this subsection
18 ~~subdivision~~, the Secretary of State shall remit the fee required for
19 recording instruments with the register of deeds as provided in section
20 33-109 to the register of deeds of a county for each designation of such
21 county in a filing pursuant to subdivision (1)(a) of this section.

22 ~~(b) This subdivision applies on and after January 1, 2018.~~ The
23 uniform fee, payable to the Secretary of State, for presenting for
24 filing, releasing, continuing, or subordinating or for filing, releasing,
25 continuing, or subordinating each tax lien pursuant to the Uniform State
26 Tax Lien Registration and Enforcement Act shall be six dollars. There
27 shall be no fee for the filing of a termination statement. The uniform
28 fee for each county more than one designated pursuant to subdivision (1)
29 (a) of this section shall be three dollars. The Secretary of State shall
30 deposit each fee received pursuant to this ~~subdivision~~ in the Uniform
31 Commercial Code Cash Fund. Of the fees received and deposited pursuant to

1 ~~this subdivision, the Secretary of State shall remit three dollars to the~~
2 ~~register of deeds of a county for each designation of such county in a~~
3 ~~filing pursuant to subdivision (1)(a) of this section.~~

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

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

11 Sec. 19. Original sections 24-517, 25-2154, 30-2483, 30-3880,
12 30-3881, 30-3882, 33-109, and 44-371, Reissue Revised Statutes of
13 Nebraska, and sections 52-1004, 68-901, 68-919, 71-605, 77-2018.02, and
14 77-3903, Revised Statutes Cumulative Supplement, 2016, are repealed.