

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 549

Introduced by Ballard, 21.

Read first time January 17, 2023

Committee: Judiciary

1 A BILL FOR AN ACT relating to protection of persons and property; to
2 amend sections 30-3828 and 30-4002, Reissue Revised Statutes of
3 Nebraska, and section 30-3402, Revised Statutes Cumulative
4 Supplement, 2022; to redefine terms; to change provisions relating
5 to health care powers of attorney, the Nebraska Uniform Trust Code,
6 and the Nebraska Uniform Power of Attorney Act; and to repeal the
7 original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-3402, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 30-3402 For purposes of sections 30-3401 to 30-3432:

4 (1) Adult shall mean any person who is eighteen nineteen years of
5 age or older or ~~who is not a minor or has been married~~;

6 (2) Attending physician shall mean the physician, selected by or
7 assigned to a principal, who has primary responsibility for the care and
8 treatment of such principal;

9 (3) Attorney in fact shall mean an adult properly designated and
10 authorized under sections 30-3401 to 30-3432 to make health care
11 decisions for a principal pursuant to a power of attorney for health care
12 and shall include a successor attorney in fact;

13 (4) Health care shall mean any treatment, procedure, or intervention
14 to diagnose, cure, care for, or treat the effects of disease, injury, and
15 degenerative conditions. Health care shall include mental health care;

16 (5) Health care decision shall include consent, refusal of consent,
17 or withdrawal of consent to health care. Health care decision shall not
18 include (a) the withdrawal or withholding of routine care necessary to
19 maintain patient comfort, (b) the withdrawal or withholding of the usual
20 and typical provision of nutrition and hydration, or (c) the withdrawal
21 or withholding of life-sustaining procedures or of artificially
22 administered nutrition or hydration, except as provided by sections
23 30-3401 to 30-3432;

24 (6) Health care provider shall mean an individual or facility
25 licensed, certified, or otherwise authorized or permitted by law to
26 administer health care in the ordinary course of business or professional
27 practice and shall include all facilities defined in the Health Care
28 Facility Licensure Act;

29 (7) Except as otherwise provided in section 30-4404 for an advance
30 mental health care directive, incapable shall mean the inability to
31 understand and appreciate the nature and consequences of health care

1 decisions, including the benefits of, risks of, and alternatives to any
2 proposed health care or the inability to communicate in any manner an
3 informed health care decision;

4 (8) Life-sustaining procedure shall mean any medical procedure,
5 treatment, or intervention that (a) uses mechanical or other artificial
6 means to sustain, restore, or supplant a spontaneous vital function and
7 (b) when applied to a person suffering from a terminal condition or who
8 is in a persistent vegetative state, serves only to prolong the dying
9 process. Life-sustaining procedure shall not include routine care
10 necessary to maintain patient comfort or the usual and typical provision
11 of nutrition and hydration;

12 (9) Mental health care shall include, but not be limited to, mental
13 health care and treatment expressly provided for in the Advance Mental
14 Health Care Directives Act;

15 (10) Persistent vegetative state shall mean a medical condition
16 that, to a reasonable degree of medical certainty as determined in
17 accordance with currently accepted medical standards, is characterized by
18 a total and irreversible loss of consciousness and capacity for cognitive
19 interaction with the environment and no reasonable hope of improvement;

20 (11) Power of attorney for health care shall mean a power of
21 attorney executed in accordance with sections 30-3401 to 30-3432 which
22 authorizes a designated attorney in fact to make health care decisions
23 for the principal when the principal is incapable;

24 (12) Principal shall mean an adult who, when competent, confers upon
25 another adult a power of attorney for health care;

26 (13) Reasonably available shall mean that a person can be contacted
27 with reasonable efforts by an attending physician or another person
28 acting on behalf of the attending physician;

29 (14) Terminal condition shall mean an incurable and irreversible
30 medical condition caused by injury, disease, or physical illness which,
31 to a reasonable degree of medical certainty, will result in death

1 regardless of the continued application of medical treatment including
2 life-sustaining procedures; and

3 (15) Usual and typical provision of nutrition and hydration shall
4 mean delivery of food and fluids orally, including by cup, eating
5 utensil, bottle, or drinking straw.

6 Sec. 2. Section 30-3828, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 30-3828 (UTC 402) (a) A trust is created only if:

9 (1) the settlor has capacity to create a trust and meets one of the
10 following requirements: ;

11 (A) the settlor is eighteen years of age or older; or

12 (B) the settlor is not a minor;

13 (2) the settlor indicates an intention to create the trust;

14 (3) the trust has a definite beneficiary or is:

15 (A) a charitable trust;

16 (B) a trust for the care of an animal, as provided in section
17 30-3834; or

18 (C) a trust for a noncharitable purpose, as provided in section
19 30-3835;

20 (4) the trustee has duties to perform; and

21 (5) the same person is not the sole trustee and sole beneficiary.

22 (b) A beneficiary is definite if the beneficiary can be ascertained
23 now or in the future, subject to any applicable rule against
24 perpetuities.

25 (c) A power in a trustee to select a beneficiary from an indefinite
26 class is valid. If the power is not exercised within a reasonable time,
27 the power fails and the property subject to the power passes to the
28 persons who would have taken the property had the power not been
29 conferred.

30 Sec. 3. Section 30-4002, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 30-4002 For purposes of the Nebraska Uniform Power of Attorney Act:

2 (1) Agent means a person granted authority to act for a principal

3 under a power of attorney, whether denominated an agent, attorney in

4 fact, or otherwise. The term includes an original agent, coagent,

5 successor agent, and a person to which an agent's authority is delegated;

6 (2) Business day means any day other than a Saturday, Sunday, or

7 state or nationally observed legal holiday;

8 (3) Durable, with respect to a power of attorney, means not

9 terminated by the principal's incapacity;

10 (4) Electronic means relating to technology having electrical,

11 digital, magnetic, wireless, optical, electromagnetic, or similar

12 capabilities;

13 (5) Good faith means honesty in fact;

14 (6) Incapacity means inability of an individual to manage property

15 or property affairs effectively because the individual:

16 (a) Has an impairment in the ability to receive and evaluate

17 information or make or communicate responsible decisions even with the

18 use of technological assistance for reasons such as mental illness,

19 mental deficiency, physical illness or disability, chronic use of drugs,

20 chronic intoxication, or lack of discretion in managing benefits received

21 from public funds; or

22 (b) Is:

23 (i) Missing;

24 (ii) Detained, including incarcerated in a penal system; or

25 (iii) Outside the United States and unable to return;

26 (7) Person means an individual, corporation, business trust, estate,

27 trust, partnership, limited liability company, association, joint

28 venture, public corporation, government or governmental subdivision,

29 agency, or instrumentality, or any other legal or commercial entity;

30 (8) Power of attorney means a writing or other record that grants

31 authority to an agent to act in the place of the principal, whether or

1 not the term power of attorney is used;

2 (9) Presently exercisable general power of appointment, with respect
3 to property or a property interest subject to a power of appointment,
4 means power exercisable at the time in question to vest absolute
5 ownership in the principal individually, the principal's estate, the
6 principal's creditors, or the creditors of the principal's estate. The
7 term includes a power of appointment not exercisable until the occurrence
8 of a specified event, the satisfaction of an ascertainable standard, or
9 the passage of a specified period only after the occurrence of the
10 specified event, the satisfaction of the ascertainable standard, or the
11 passage of the specified period. The term does not include a power
12 exercisable in a fiduciary capacity or only by will;

13 (10) Principal means an individual, who is eighteen years of age or
14 older or is not a minor, who grants authority to an agent in a power of
15 attorney;

16 (11) Property means anything that may be the subject of ownership,
17 whether real or personal, legal or equitable, or any interest or right
18 therein;

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

22 (13) Sign means, with present intent to authenticate or adopt a
23 record:

24 (a) To execute or adopt a tangible symbol; or

25 (b) To attach to or logically associate with the record an
26 electronic sound, symbol, or process;

27 (14) State means a state of the United States, the District of
28 Columbia, Puerto Rico, the United States Virgin Islands, or any territory
29 or insular possession subject to the jurisdiction of the United States;
30 and

31 (15) Stocks and bonds means stocks, bonds, mutual funds, and all

1 other types of securities and financial instruments, whether held
2 directly, indirectly, or in any other manner. The term does not include
3 commodity futures contracts and call or put options on stocks or stock
4 indexes.

5 Sec. 4. Original sections 30-3828 and 30-4002, Reissue Revised
6 Statutes of Nebraska, and section 30-3402, Revised Statutes Cumulative
7 Supplement, 2022, are repealed.