

AMENDMENTS TO LB 367

(Amendments to Standing Committee amendments, AM911)

Introduced by Friend, 10

1           1. Insert the following new sections:

2           Sec. 5. Section 30-103.01, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           30-103.01 The interest of any surviving spouse in any  
5 estate passing under Chapter 30, article 23, parts 1, 2, and 4,  
6 shall be determined prior to the payment of any ~~federal or state~~  
7 estate taxes, and shall not be subject to or diminished by any debt  
8 or charge against such estate by reason of any ~~such federal or~~  
9 ~~state~~ estate tax.

10          Sec. 6. Section 30-2209, Revised Statutes Cumulative  
11 Supplement, 2006, is amended to read:

12          30-2209 Subject to additional definitions contained in  
13 the subsequent articles which are applicable to specific articles  
14 or parts, and unless the context otherwise requires, in the  
15 Nebraska Probate Code:

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

19           (2) Beneficiary, as it relates to trust beneficiaries,  
20 includes a person who has any present or future interest, vested  
21 or contingent, and also includes the owner of an interest by  
22 assignment or other transfer, and as it relates to a charitable

1 trust includes any person entitled to enforce the trust.

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

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

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

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

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

26 (8) Devisee means any person designated in a will to  
27 receive a devise. In the case of a devise to an existing trust or

1 trustee, or to a trustee on trust described by will, the trust or  
2 trustee is the devisee and the beneficiaries are not devisees.

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

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

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

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

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

24 (14) Fiduciary includes personal representative,  
25 guardian, conservator, and trustee.

26 (15) Foreign personal representative means a personal  
27 representative of another jurisdiction.

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

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

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

10           (19) Incapacitated person is as defined in section  
11 30-2601.

12           (20) Informal proceedings mean those conducted without  
13 notice to interested persons by an officer of the court acting as  
14 a registrar for probate of a will or appointment of a personal  
15 representative.

16           (21) Interested person includes heirs, devisees,  
17 children, spouses, creditors, beneficiaries, and any others having  
18 a property right in or claim against a trust estate or the  
19 estate of a decedent, ward, or protected person which may be  
20 affected by the proceeding. It also includes persons having  
21 priority for appointment as personal representative, and other  
22 fiduciaries representing interested persons. The meaning as it  
23 relates to particular persons may vary from time to time and must  
24 be determined according to the particular purposes of, and matter  
25 involved in, any proceeding.

26           (22) Interested witness to a will means any individual  
27 who acts as a witness to a will at the date of its execution and

1 who is or would be entitled to receive any property thereunder  
2 if the testator then died under the circumstances existing at  
3 the date of its execution, but does not include any individual,  
4 merely because of such nomination, who acts as a witness to a  
5 will by which he or she is nominated as personal representative,  
6 conservator, guardian, or trustee.

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

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

12 (25) Letters include letters testamentary, letters  
13 of guardianship, letters of administration, and letters of  
14 conservatorship.

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

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

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

23 (29) Notice means compliance with the requirements of  
24 notice pursuant to subdivisions (a)(1) and (a)(2) of section  
25 30-2220.

26 (30) Organization includes a corporation, government, or  
27 governmental subdivision or agency, business trust, estate, trust,

1 partnership, limited liability company, or association, two or more  
2 persons having a joint or common interest, or any other legal  
3 entity.

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

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

11 (33) Personal representative includes executor,  
12 administrator, successor personal representative, special  
13 administrator, and persons who perform substantially the same  
14 function under the law governing their status.

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

17 (35) Proceeding includes action at law and suit in  
18 equity, but does not include a determination of inheritance tax  
19 under Chapter 77, article 20\_\_, ~~or estate tax apportionment as~~  
20 ~~provided in sections 77-2108 to 77-2112.~~

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

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

25 (38) Protective proceeding is as defined in section  
26 30-2601.

27 (39) Registrar refers to the official of the court

1 designated to perform the functions of registrar as provided in  
2 section 30-2216.

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

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

15 (42) Settlement, in reference to a decedent's estate,  
16 includes the full process of administration, distribution, and  
17 closing.

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

20 (44) State includes any state of the United States, the  
21 District of Columbia, the Commonwealth of Puerto Rico, and any  
22 territory or possession subject to the legislative authority of the  
23 United States.

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

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

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

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

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

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

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

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

27           (53) Will means any instrument, including any codicil or

1 other testamentary instrument complying with sections 30-2326 to  
2 30-2338, which disposes of personal or real property, appoints  
3 a personal representative, conservator, guardian, or trustee,  
4 revokes or revises an earlier executed testamentary instrument,  
5 or encompasses any one or more of such objects or purposes.

6 Sec. 7. Section 30-2352, Revised Statutes Cumulative  
7 Supplement, 2006, is amended to read:

8 30-2352 (a)(1) A person (or the representative of a  
9 deceased, incapacitated, or protected person) who is an heir,  
10 devisee, person succeeding to a renounced interest, donee,  
11 beneficiary under a testamentary or nontestamentary instrument,  
12 donee of a power of appointment, grantee, surviving joint owner  
13 or surviving joint tenant, beneficiary, or owner of an insurance  
14 contract or any incident of ownership therein, beneficiary or  
15 person designated to take pursuant to a power of appointment  
16 exercised by a testamentary or nontestamentary instrument, person  
17 who has a statutory entitlement to or election with respect to  
18 property pursuant to the Nebraska Probate Code, or recipient of  
19 any beneficial interest under any testamentary or nontestamentary  
20 instrument, may renounce in whole or in part, or with reference  
21 to specific parts, fractional shares, undivided portions or assets  
22 thereof, by filing a written instrument of renunciation within the  
23 time and at the place hereinafter provided.

24 (2) The instrument shall (i) describe the property or  
25 part thereof or the interest therein renounced, (ii) be signed  
26 and acknowledged by the person renouncing in the manner provided  
27 for in the execution of deeds of real estate, (iii) declare the

1 renunciation and the extent thereof, and (iv) declare that the  
2 renunciation is an irrevocable and unqualified refusal to accept  
3 the renounced interest.

4 (3) The appropriate court in a proceeding under section  
5 30-3812, may direct or permit a trustee under a testamentary  
6 or nontestamentary instrument to renounce any restriction on or  
7 power of administration, management, or allocation of benefit upon  
8 finding that such restrictions on the exercise of such power may  
9 defeat or impair the accomplishment of the purposes of the trust  
10 whether by the imposition of tax or the allocation of beneficial  
11 interest inconsistent with such purposes or by other reason. Such  
12 authority shall be exercised after hearing and upon notice to  
13 qualified beneficiaries as defined in section 30-3803, in the  
14 manner directed by the court.

15 (b) The instrument specified in (a)(1) and (a)(2) must  
16 be received by the transferor of the interest, his or her  
17 legal representative, the personal representative of a deceased  
18 transferor, the trustee of any trust in which the interest being  
19 renounced exists, or the holder of the legal title to the property  
20 to which the interest relates. To be effective for purposes of  
21 determining inheritance and estate taxes tax under articles 20  
22 ~~and 21 of Chapter 77,~~ sections 77-2001 to 77-2039, the instrument  
23 must be received not later than the date which is nine months  
24 after the later of (i) the date on which the transfer creating  
25 the interest in such person is made, or (ii) the date on which  
26 such person attains age twenty-one. If the circumstances which  
27 establish the right of a person to renounce an interest arise as

1 a result of the death of an individual, the instrument shall also  
2 be filed in the court of the county where proceedings concerning  
3 the decedent's estate are pending, or where they would be pending  
4 if commenced. If an interest in real estate is renounced, a copy  
5 of the instrument shall also be recorded in the office of the  
6 register of deeds in the county in which the real estate lies. No  
7 person entitled to a copy of the instrument shall be liable for  
8 any proper distribution or disposition made without actual notice  
9 of the renunciation and no such person making a proper distribution  
10 or disposition in reliance upon the renunciation shall be liable  
11 for any such distribution or disposition in the absence of actual  
12 notice that an action has been instituted contesting the validity  
13 of the renunciation.

14 (c) Unless the transferor of the interest has otherwise  
15 indicated in the instrument creating the interest, the interest  
16 renounced, and any future interest which is to take effect in  
17 possession or enjoyment at or after the termination of the interest  
18 renounced, passes as if the person renouncing had predeceased the  
19 decedent or had died prior to the date on which the transfer  
20 creating the interest in such person is made, as the case may  
21 be, if the renunciation is within the time periods set forth in  
22 subsection (b) and if not within such time periods the interest  
23 renounced, and any future interest which is to take effect in  
24 possession or enjoyment at or after the termination of the interest  
25 renounced, passes as if the person renouncing had died on the  
26 date the interest was renounced. The person renouncing shall have  
27 no power to direct how the interest being renounced shall pass,

1 except that the renunciation of an interest for which the right  
2 to renounce was established by the death of an individual shall,  
3 in the case of the spouse of the decedent, relate only to that  
4 statutory provision or that provision of the instrument creating  
5 the interest being renounced and shall not preclude the spouse  
6 from receiving the benefits of the renounced interest which may be  
7 derived as a result of the renounced interest passing pursuant to  
8 other statutory provisions or pursuant to other provisions of the  
9 instrument creating the interest unless such further benefits are  
10 also renounced. In every case when the renunciation is within the  
11 time periods set forth in subsection (b) the renunciation relates  
12 back for all purposes to the date of death of the decedent or the  
13 date on which the transfer creating the interest in such person is  
14 made, as the case may be.

15 (d) Any (1) assignment, conveyance, encumbrance, pledge,  
16 or transfer of property therein or any contract therefor, (2)  
17 written waiver of the right to renounce or any acceptance of  
18 property or benefits therefrom or an interest therein by an  
19 heir, devisee, person succeeding to a renounced interest, donee,  
20 beneficiary under a testamentary or nontestamentary instrument,  
21 donee of a power of appointment, grantee, surviving joint owner  
22 or surviving joint tenant, beneficiary or owner of an insurance  
23 contract or any incident of ownership therein, beneficiary or  
24 person designated to take pursuant to a power of appointment  
25 exercised by a testamentary or nontestamentary instrument, person  
26 who has a statutory entitlement to or election with respect to  
27 property pursuant to the Nebraska Probate Code, or recipient of

1 any beneficial interest under any testamentary or nontestamentary  
2 instrument, or (3) sale or other disposition of property pursuant  
3 to judicial process, made within the time periods set forth in  
4 subsection (b) shall not bar the right to renounce, but shall  
5 make a subsequent renunciation within the time period set forth  
6 in subsection (b) of this section ineffective for purposes of  
7 determination of inheritance ~~and estate taxes~~ tax under articles 20  
8 ~~and 21 of Chapter 77.~~ sections 77-2001 to 77-2039.

9 (e) Within thirty days of receipt of a written instrument  
10 of renunciation by the transferor of the interest, his or her legal  
11 representative, the personal representative of the decedent, the  
12 trustee of any trust in which the interest being renounced exists,  
13 or the holder of the legal title to the property to which the  
14 interest relates, as the case may be, such person shall attempt  
15 to notify in writing those persons who are known or ascertainable  
16 with reasonable diligence who shall be recipients or potential  
17 recipients of the renounced interest of the renunciation and the  
18 interest or potential interest such recipient shall receive as a  
19 result of the renunciation.

20 (f) The right to renounce granted by this section exists  
21 irrespective of any limitation on the interest of the person  
22 renouncing in the nature of a spendthrift provision or similar  
23 restriction. A trust beneficiary whose interest is subject to any  
24 limitation in the nature of a spendthrift provision or similar  
25 restriction may assign, sell, or otherwise convey such interest or  
26 any part thereof upon a finding by a court in a proceeding under  
27 section 30-3812 that the rights of other beneficiaries would not

1 be impaired and that such assignment, sale, or other conveyance  
2 would not result in any substantial benefit to nonbeneficiaries  
3 of the trust at the expense of the trust or trust beneficiaries.  
4 Such finding may be made after hearing and upon notice to all  
5 known persons beneficially interested in such trust, in the manner  
6 directed by the court.

7 (g) This section does not abridge the right of any person  
8 to assign, convey, release, or renounce any property arising under  
9 any other section of this code or other statute.

10 (h) Any interest in property which exists on July 19,  
11 1980, may be renounced after July 19, 1980, as provided herein. An  
12 interest which has arisen prior to July 19, 1980, in any person  
13 other than the person renouncing is not destroyed or diminished by  
14 any action of the person renouncing taken under this section.

15 Sec. 8. Section 77-381, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 77-381 For purposes of the Tax Expenditure Reporting Act,  
18 unless the context otherwise requires:

19 (1) Tax expenditure shall mean a revenue reduction that  
20 occurs in the tax base of the state or a political subdivision  
21 as the result of an exemption, deduction, exclusion, tax deferral,  
22 credit, or preferential rate introduced into the tax structure;

23 (2) Department shall mean the Department of Revenue;

24 (3) Income tax shall mean the tax imposed upon  
25 individuals and corporations under the Nebraska Revenue Act of  
26 1967;

27 (4) Sales tax shall mean the tax imposed upon

1 expenditures under the Nebraska Revenue Act of 1967;

2 (5) Property tax shall mean the tax imposed upon real and  
3 personal property under Chapter 77; and

4 (6) Miscellaneous tax shall mean revenue sources other  
5 than income, sales, and property taxes for state and local  
6 government including, but not limited to, motor fuel taxes,  
7 liquor taxes, cigarette taxes, inheritance and estate taxes,  
8 ~~generation-skipping transfer taxes~~, insurance premium taxes, and  
9 occupation taxes and fees or other taxes which generate state or  
10 local revenue annually in excess of two million dollars.

11 Sec. 10. Section 77-2039, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 77-2039 (1) Any county court may issue an order  
14 discharging any or all of the property subject to any inheritance  
15 tax, ~~Nebraska estate tax~~, or ~~generation-skipping transfer tax~~ lien.

16 (2) The county court may prescribe the terms and  
17 conditions upon which any inheritance tax, ~~estate tax~~, or  
18 ~~generation-skipping transfer tax~~ lien shall be released or  
19 discharged.

20 (3) Any person who desires a release or discharge of any  
21 inheritance tax, ~~estate tax~~, or ~~generation-skipping transfer tax~~  
22 lien shall make a written application to the county court. If the  
23 county attorney shall not consent to the release or discharge of  
24 the lien as requested in the application by entering his or her  
25 voluntary appearance and waiver of notice, he or she shall within  
26 seven days of the filing of such application show in writing why  
27 such release or discharge should not be granted or shall specify

1 the terms and conditions upon which such release or discharge  
2 should be allowed.

3 Sec. 28. Section 77-3307, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 77-3307 In any case where it is determined by the  
6 board that the decedent died domiciled in this state, no interest  
7 ~~otherwise imposed by sections 77-2010 and 77-2102,~~ for nonpayment  
8 of death taxes between the date of the agreement and of filing of  
9 the determination of the board as to domicile shall be charged.

10 Sec. 29. Section 77-3310, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 77-3310 When the Nebraska taxing authority claims that  
13 a decedent was domiciled in this state at the time of his death  
14 and the taxing authorities of another state or states make a like  
15 claim on behalf of their state or states, the Nebraska taxing  
16 authority may make a written agreement of compromise with the other  
17 taxing authorities and the executor or administrator that a certain  
18 sum shall be accepted in full satisfaction of any and all death  
19 taxes imposed by this state, including any interest to the date of  
20 filing the agreement. The agreement shall also fix the amount to be  
21 accepted by the other states in full satisfaction of death taxes.  
22 The executor or administrator is hereby authorized to make such  
23 agreement. Either the Nebraska taxing authority or the executor or  
24 administrator shall file the agreement, or a duplicate, with the  
25 authority that would be empowered to determine death taxes for this  
26 state if there had been no agreement, and thereupon the tax shall  
27 be deemed conclusively fixed as therein provided. Unless the tax

1 is paid within ninety days after filing the agreement, interest  
2 ~~as provided for by sections 77-2010 and 77-2102,~~ shall thereafter  
3 accrue upon the amount fixed in the agreement but the time between  
4 the decedent's death and the filing shall not be included in  
5 computing such interest.

6 Sec. 30. Section 77-3313, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 77-3313 For purposes of the Uniform Act on Interstate  
9 Arbitration and Compromise of Death Taxes, (1) ~~state shall mean~~  
10 means any state, territory, or possession of the United States  
11 and the District of Columbia and (2) Nebraska taxing authority  
12 ~~shall mean (a) the Attorney General or the Tax Commissioner for~~  
13 ~~state estate or generation-skipping transfer tax purposes and (b)~~  
14 means the Attorney General or the county attorney. ~~for Nebraska~~  
15 ~~inheritance tax purposes.~~

16 Sec. 31. The changes made in sections 30-103.01, 30-2209,  
17 30-2352, 77-2039, 77-3307, 77-3310, and 77-3313 by this legislative  
18 bill and the repeal of sections 30-24,114, 77-2040, and 77-2101 to  
19 77-2116 become operative for decedents dying on or after January 1,  
20 2007, or for generation-skipping transfers made on or after January  
21 1, 2007.

22 Sec. 38. Original sections 30-103.01, 77-381, 77-2039,  
23 77-3307, 77-3310, and 77-3313, Reissue Revised Statutes of  
24 Nebraska, and sections 30-2209, 30-2352, 77-2715.02, 77-2716.01,  
25 and 77-2716.03, Revised Statutes Cumulative Supplement, 2006, are  
26 repealed.

27 Sec. 39. The following sections are outright repealed:

1 Sections 30-24,114, 77-2040, 77-2101, 77-2101.02, 77-2102, 77-2104,  
2 77-2105, 77-2106, 77-2106.01, 77-2106.02, 77-2108, 77-2109,  
3 77-2110, 77-2111, 77-2112, 77-2113, 77-2114, and 77-2116, Reissue  
4 Revised Statutes of Nebraska, and sections 77-2101.01, 77-2101.03,  
5 and 77-2115, Revised Statutes Cumulative Supplement, 2006.

6           2. Correct the operative date section so that the  
7 sections added by this amendment become operative on their  
8 effective date with the emergency clause.

9           3. Renumber the remaining sections and correct internal  
10 references accordingly.