

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 332

Introduced by Ashford, 20.

Read first time January 15, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to courts; to amend sections 23-1205, 25-2405,
2 25-2721, 29-437, 30-2429.01, 30-2436, 43-103, 43-1314.02,
3 43-3001, and 43-3713, Reissue Revised Statutes of
4 Nebraska; to provide an exception to the interpreter
5 oath as prescribed; to change provisions relating to
6 acting county attorneys, trial by jury, probate of wills,
7 adoption hearings, caregiver information, information
8 regarding children in state custody, and court appointed
9 special advocate volunteers; and to repeal the original
10 sections.

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

1 Section 1. Section 23-1205, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 23-1205 ~~In~~ Due to the absence, sickness, ~~or~~ disability,
4 or conflict of interest of the county attorney and his or her
5 deputies, or upon request of the county attorney for good cause,
6 the ~~court~~ Supreme Court, the Court of Appeals, or any district
7 court, separate juvenile court, or county court before which the
8 cause may be heard may appoint an attorney to act as county
9 attorney in any investigation, appearance, or trial, by an order
10 ~~to be~~ entered upon the minutes of the court. Such attorney shall
11 be allowed compensation for such services as the court ~~shall~~
12 ~~determine,~~ determines, to be paid by order of the county treasurer,
13 upon presenting to the county board the certificate of the judge
14 before whom the cause was tried certifying to services rendered by
15 such attorney and the amount of compensation.

16 Sec. 2. Section 25-2405, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 25-2405 Every interpreter, except those certified under
19 the rules of the Supreme Court and who have taken the prescribed
20 oath of office, appointed pursuant to sections 25-2401 to 25-2407,
21 before entering upon his or her duties as such, shall take an oath
22 that he or she will, to the best of his or her skill and judgment,
23 make a true interpretation to such person unable to communicate
24 the English language of all the proceedings in a language which
25 such person understands and that he or she will, in the English

1 language, repeat the statements of such person to the court, jury,
2 or officials before whom such proceeding takes place.

3 Sec. 3. Section 25-2721, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 25-2721 (1) Any person having a judgment rendered by a
6 county court may cause a transcript of the judgment to be filed in
7 the office of the clerk of the county court in any county of this
8 state. When the transcript is so filed, request the clerk of such
9 court may to issue execution on the judgment in the same manner
10 as execution is issued upon other judgments rendered in the county
11 court and direct the execution on the judgment to any county in
12 the state. Such person may request that garnishment, attachment, or
13 any other aid to execution be directed to any county without the
14 necessity of filing a transcript of the judgment in the receiving
15 county and any hearing or proceeding with regard to such execution
16 or aid in execution shall be heard in the court in which the
17 judgment was originally rendered.

18 (2) Any person having a judgment rendered by a county
19 court may cause a transcript thereof to be filed in the office of
20 the clerk of the district court in any county of this state. When
21 the transcript is so filed and entered upon the judgment record,
22 such judgment shall be a lien on real estate in the county where
23 the ~~same~~ transcript is filed, and when the ~~same~~ transcript is so
24 filed and entered upon such judgment record, the clerk of such
25 court may issue execution thereupon in like manner as execution is

1 issued upon judgments rendered in the district court.

2 Sec. 4. Section 29-437, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 29-437 The trial of any person for an infraction or for
5 a Class V, Class IV, Class IIIA, or Class III misdemeanor shall
6 be by the court without a jury. All other rights provided by the
7 Constitution of the United States made applicable to the states
8 by the Fourteenth Amendment to the Constitution of the United
9 States and the Constitution of the State of Nebraska shall apply to
10 persons charged with ~~an infraction.~~ such an offense.

11 Sec. 5. Section 30-2429.01, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 30-2429.01 (1) If there is an objection to probate of a
14 will or if a petition is filed to set aside an informal probate
15 of a will or to prevent informal probate of a will which is the
16 subject of a pending application, the county court shall continue
17 the originally scheduled hearing for at least fourteen days from
18 the date of the hearing. At any time prior to the continued hearing
19 date any party may ~~transfer the proceeding to determine whether~~
20 ~~the decedent left a valid will to the district court by filing~~
21 ~~with the county court a notice of transfer,~~ depositing with the
22 clerk of the county court a docket fee in the amount of the filing
23 fee in district court for cases originally commenced in district
24 court, and paying to the clerk of the county court a fee of
25 ~~twenty dollars.~~ commence an action in the county court to determine

1 whether the decedent left a valid will by depositing with the clerk
2 of the county court the fee provided in section 33-123.

3 ~~(2) Within ten days of the completion of the requirements~~
4 ~~of subsection (1) of this section, the clerk of the county court~~
5 ~~shall transmit to the clerk of the district court a certified~~
6 ~~transcript of the complete record of the matter transferred and the~~
7 ~~docket fee.~~

8 ~~(3) Upon the filing of the transcript in the district~~
9 ~~court, such court shall have jurisdiction over the proceeding~~
10 ~~on the contest. (2) Within thirty days of the filing of the~~
11 ~~transcript, action, any party may file additional objections.~~

12 ~~(4) (3) The district court may order such additional~~
13 ~~pleadings as necessary and shall thereafter determine whether the~~
14 ~~decedent left a valid will. Trial shall be to a jury of six persons~~
15 ~~as in other civil actions in the county court unless a jury is~~
16 ~~waived by all parties who have filed pleadings in the matter.~~

17 ~~(5) The final decision and judgment in the matter~~
18 ~~transferred shall be certified to the county court, and proceedings~~
19 ~~shall be had thereon necessary to carry the final decision and~~
20 ~~judgment into execution.~~

21 Sec. 6. Section 30-2436, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 30-2436 Subject to appeal and subject to vacation as
24 provided herein and in section 30-2437, a formal testacy order
25 under sections 30-2433 to 30-2435, including an order that the

1 decedent left no valid will and determining heirs, is final as to
2 all persons with respect to all issues concerning the decedent's
3 estate that the court considered or might have considered incident
4 to its rendition relevant to the question of whether the decedent
5 left a valid will, and to the determination of heirs, except that:

6 (1) The court shall entertain a petition for modification
7 or vacation of its order and probate of another will of the
8 decedent if it is shown that the proponents of the later-offered
9 will were unaware of its existence at the time of the earlier
10 proceeding or were unaware of the earlier proceeding and were given
11 no notice thereof, except by publication.

12 (2) If intestacy of all or part of the estate has
13 been ordered, the determination of heirs of the decedent may be
14 reconsidered if it is shown that one or more persons were omitted
15 from the determination and it is also shown that the persons were
16 unaware of their relationship to the decedent, were unaware of his
17 or her death or were given no notice of any proceeding concerning
18 his or her estate, except by publication.

19 (3) A petition for vacation under either (1) or (2) above
20 must be filed prior to the earlier of the following time limits:

21 (i) If a personal representative has been appointed
22 for the estate, the time of entry of any order approving final
23 distribution of the estate, or, if the estate is closed by
24 statement, six months after the filing of the closing statement.

25 (ii) Whether or not a personal representative has been

1 appointed for the estate of the decedent, the time prescribed by
2 subdivision (1), (2), or (3) of section 30-2408 when it is no
3 longer possible to initiate an original proceeding to probate a
4 will of the decedent.

5 (iii) Twelve months after the entry of the order sought
6 to be vacated.

7 (4) The order originally rendered in the testacy
8 proceeding may be modified or vacated, if appropriate under the
9 circumstances, by the order of probate of the later-offered will
10 or the order redetermining heirs.

11 (5) The finding of the fact of death is conclusive as
12 to the alleged decedent only if notice of the hearing on the
13 petition in the formal testacy proceeding was sent by registered
14 or certified mail addressed to the alleged decedent at his or her
15 last-known address and the court finds that a search under section
16 30-2427(b) was made.

17 If the alleged decedent is not dead, even if notice was
18 sent and search was made, he or she may recover estate assets
19 in the hands of the personal representative. In addition to any
20 remedies available to the alleged decedent by reason of any fraud
21 or intentional wrongdoing, the alleged decedent may recover any
22 estate or its proceeds from distributees that is in their hands,
23 or the value of distributions received by them, to the extent that
24 any recovery from distributees is equitable in view of all of the
25 circumstances.

1 ~~(6) In a contested will case in which the district~~
2 ~~court heard a transferred proceeding and certified the results~~
3 ~~to the county court under section 30-2429.01, any petition for~~
4 ~~modification under subsection (1) of this section shall be filed~~
5 ~~in the county court from which the proceedings were transferred,~~
6 ~~any party may thereafter remove the proceedings for modification or~~
7 ~~vacation in accordance with section 30-2429.01.~~

8 Sec. 7. Section 43-103, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 43-103 Except as otherwise provided in the Nebraska
11 Indian Child Welfare Act, upon the filing of ~~such~~ a petition for
12 adoption the court shall fix a time for hearing the same. The
13 hearing shall be held ~~7~~ not less than four weeks nor more than
14 eight weeks after the filing of such petition unless any party
15 for good cause shown requests a continuance of the hearing or all
16 parties agree to a continuance. The court may require notice of the
17 hearing to be given to the child, if over fourteen years of age,
18 to the natural parent or parents of the child, and to such other
19 interested persons as the judge may, in the exercise of discretion,
20 deem advisable, in the manner provided for service of a summons
21 in a civil action. If the judge directs notice by publication,
22 such notice shall be published three successive weeks in a legal
23 newspaper of general circulation in such county.

24 Sec. 8. Section 43-1314.02, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 43-1314.02 (1) The court shall provide a caregiver
2 information form or directions on downloading such form from the
3 Supreme Court Internet web site to the foster parent, preadoptive
4 parent, guardian, or relative providing care for the child when
5 giving notice of a court review described in section 43-1314. The
6 form is to be dated and signed by the caregiver and shall, at a
7 minimum, request the following:

8 (a) The child's name, age, and date of birth;

9 (b) The name of the caregiver, his or her telephone
10 number and address, and whether the caregiver is a foster parent,
11 preadoptive parent, guardian, or relative;

12 (c) How long the child has been in the caregiver's care;

13 (d) A current picture of the child;

14 (e) The current status of the child's medical, dental,
15 and general physical condition;

16 (f) The current status of the child's emotional
17 condition;

18 (g) The current status of the child's education;

19 (h) Whether or not the child is a special education
20 student and the date of the last individualized educational plan;

21 (i) A brief description of the child's social skills and
22 peer relationships;

23 (j) A brief description of the child's special interests
24 and activities;

25 (k) A brief description of the child's reactions before,

1 during, and after visits;

2 (l) Whether or not the child is receiving all necessary
3 services;

4 (m) The date and place of each visit by the caseworker
5 with the child;

6 (n) A description of the method by which the guardian ad
7 litem has acquired information about the child; and

8 (o) Whether or not the caregiver can make a permanent
9 commitment to the child if the child does not return home.

10 (2) A caregiver information form shall be developed by
11 the Supreme Court. Such form shall be made a part of the record in
12 each court that reviews the child's foster care proceedings.

13 Sec. 9. Section 43-3001, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 43-3001 (1) Notwithstanding any other provision of law
16 regarding the confidentiality of records and when not prohibited
17 by the federal Privacy Act of 1974, as amended, juvenile court
18 records and any other pertinent information that may be in the
19 possession of school districts, school personnel, county attorneys,
20 the Attorney General, law enforcement agencies, child advocacy
21 centers, state probation personnel, state parole personnel, youth
22 detention facilities, medical personnel, treatment or placement
23 programs, the Department of Health and Human Services, the
24 Department of Correctional Services, the State Foster Care Review
25 Board, child abuse and neglect investigation teams, child abuse

1 and neglect treatment teams, or other multidisciplinary teams for
2 abuse, neglect, or delinquency concerning a child who is in the
3 custody of the state may be shared with individuals and agencies
4 who have been identified in a court order authorized by this
5 section.

6 (2) In any judicial proceeding concerning a child who is
7 currently, or who may become at the conclusion of the proceeding,
8 a ward of the court or state or under the supervision of the
9 court, an order may be issued which identifies individuals and
10 agencies who shall be allowed to receive otherwise confidential
11 information concerning the child for legitimate and official
12 purposes. The individuals and agencies who may be identified in
13 the court order are the child's attorney or guardian ad litem, the
14 parents' attorney, foster parents, appropriate school personnel,
15 county attorneys, the Attorney General, authorized court personnel,
16 law enforcement agencies, state probation personnel, state parole
17 personnel, youth detention facilities, medical personnel, court
18 appointed special advocate volunteers, treatment or placement
19 programs, the Department of Health and Human Services, the Office
20 of Juvenile Services, the Department of Correctional Services,
21 the State Foster Care Review Board, child abuse and neglect
22 investigation teams, child abuse and neglect treatment teams, ~~and~~
23 other multidisciplinary teams for abuse, neglect, or delinquency,
24 and other individuals and agencies for which the court specifically
25 finds, in writing, that it would be in the best interest of the

1 juvenile to receive such information. Unless the order otherwise
2 states, the order shall be effective until the child leaves the
3 custody of the state or until a new order is issued.

4 (3) All information acquired by an individual or agency
5 pursuant to this section shall be confidential and shall not
6 be disclosed except to other persons who have a legitimate and
7 official interest in the information and are identified in the
8 court order issued pursuant to this section with respect to the
9 child in question. A person who receives such information or
10 who cooperates in good faith with other individuals and agencies
11 identified in the appropriate court order by providing information
12 or records about a child shall be immune from any civil or criminal
13 liability. The provisions of this section granting immunity from
14 liability shall not be extended to any person alleged to have
15 committed an act of child abuse or neglect.

16 (4) In any proceeding under this section relating to a
17 child of school age, certified copies of school records relating to
18 attendance and academic progress of such child are admissible in
19 evidence.

20 (5) Except as provided in subsection (4) of this section,
21 any person who publicly discloses information received pursuant to
22 this section shall be guilty of a Class III misdemeanor.

23 Sec. 10. Section 43-3713, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 43-3713 (1) All government agencies, service providers,

1 professionals, school districts, school personnel, parents, and
2 families shall cooperate with all reasonable requests of the court
3 appointed special advocate volunteer. The volunteer shall cooperate
4 with all government agencies, service providers, professionals,
5 school districts, school personnel, parents, and families.

6 (2) The volunteer shall be notified in a timely manner
7 of all hearings, meetings, and any other proceeding concerning
8 the case to which he or she has been appointed. The court in
9 its discretion may proceed notwithstanding failure to notify the
10 volunteer or failure of the volunteer to appear.

11 Sec. 11. Original sections 23-1205, 25-2405, 25-2721,
12 29-437, 30-2429.01, 30-2436, 43-103, 43-1314.02, 43-3001, and
13 43-3713, Reissue Revised Statutes of Nebraska, are repealed.