

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 615**

Introduced by Schumacher, 22.

Read first time January 23, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Nebraska Probate Code; to amend sections  
2 30-2201 and 30-2601, Revised Statutes Cumulative  
3 Supplement, 2012; to provide for summary guardianships;  
4 to harmonize provisions; to provide an operative date;  
5 and to repeal the original sections.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Summary guardianship shall meet the  
2 requirements of sections 1 to 7 of this act. To commence a summary  
3 guardianship, a person named in subdivision (3) of this section may  
4 register as a summary guardian of the person alleged to be  
5 incapacitated by filing with the court where such person resides a  
6 verified summary guardian affidavit of incapacity stating:

7           (1) The name and address of the incapacitated person;

8           (2) That to the best of the summary guardian's knowledge  
9 and belief, the person is incapacitated, has an estate totaling ten  
10 thousand dollars or less, and is expected to have annual receipts  
11 totaling less than twelve thousand dollars;

12           (3) That the summary guardian is a family member of an  
13 incapacitated person, a person nominated by the incapacitated person  
14 in a power of attorney or a durable power of attorney, a person  
15 acting under a power of attorney or durable power of attorney, an  
16 attorney, a certified public accountant, or a representative of a  
17 financial institution;

18           (4) That to the best of the summary guardian's knowledge  
19 and belief, no other application for summary guardianship for such  
20 incapacitated person has been filed in any other jurisdiction; and

21           (5) That the summary guardian agrees to the duties of a  
22 summary guardian as set forth in section 4 of this act and agrees to  
23 file the documents required by section 6 of this act.

24           Sec. 2. (1) The person filing the summary guardian  
25 affidavit under section 1 of this act shall send notice of the filing

1 to all interested persons within three days after the filing.

2 (2) By filing the summary guardian affidavit, the summary  
3 guardian submits personally to the jurisdiction of the court in any  
4 proceeding relating to the guardianship that may be instituted by any  
5 interested person. Notice of any such proceeding shall be delivered  
6 to the summary guardian or mailed to him or her by ordinary mail at  
7 the address as listed in the court records and the address known to  
8 the petitioner if different than that listed in the court records.

9 Sec. 3. (1) The person alleged to be incapacitated or an  
10 interested person may file an objection to the summary guardianship  
11 within thirty days after the filing of the summary guardian  
12 affidavit. If no objection is filed, the summary guardianship shall  
13 be effective beginning thirty days after the date of filing of the  
14 summary guardian affidavit.

15 (2) If an objection is filed, a finding of incapacity is  
16 required for the person alleged to be incapacitated and such petition  
17 and related proceeding shall be governed by sections 30-2619 to  
18 30-2619.04. The fees for such proceeding shall be paid as directed in  
19 section 30-2620.01. A finding of incapacity shall be by clear and  
20 convincing evidence.

21 Sec. 4. A summary guardian of an incapacitated person has  
22 the same powers, rights, and duties respecting the guardian's ward  
23 that a parent has respecting the parent's unemancipated minor child,  
24 except that a summary guardian is not personally liable for the  
25 support or debts of the ward and is not liable to third persons for

1 acts of the ward solely by reason of the parental relationship. In  
2 particular, and without qualifying the foregoing, a summary guardian  
3 has the following powers and duties:

4 (1) To the extent that it is consistent with the terms of  
5 any order by a court of competent jurisdiction relating to detention  
6 or commitment of the ward, a summary guardian is entitled to custody  
7 of the person of his or her ward and may establish the ward's place  
8 of abode within this state or, with court permission, outside of this  
9 state. When establishing the ward's place of abode, a summary  
10 guardian shall make every reasonable effort to ensure that the  
11 placement is the least restrictive alternative. A summary guardian  
12 shall authorize a placement to a more restrictive environment only  
13 after careful evaluation of the need for such placement. The summary  
14 guardian may obtain a professional evaluation or assessment that such  
15 placement is in the best interest of the ward;

16 (2) If entitled to custody of his or her ward, a summary  
17 guardian shall make provision for the care, comfort, and maintenance  
18 of his or her ward and, whenever appropriate, arrange for the ward's  
19 training and education. Without regard to custodial rights of the  
20 ward's person, a summary guardian shall take reasonable care of his  
21 or her ward's clothing, furniture, vehicles, and other personal  
22 effects and commence protective proceedings if other property of his  
23 or her ward is in need of protection;

24 (3) A summary guardian may give any consents or approvals  
25 that may be necessary to enable the ward to receive medical,

1 psychiatric, psychological, or other professional care, counsel,  
2 treatment, or service. When making such medical or psychiatric  
3 decisions, the summary guardian shall consider and carry out the  
4 intent of the ward expressed prior to incompetency to the extent  
5 allowable by law. Notwithstanding this subdivision or any other  
6 provision of the Nebraska Probate Code, the ward may authorize the  
7 release of financial, medical, and other confidential records  
8 pursuant to sections 20-161 to 20-166; and

9 (4) A guardian shall exercise care to conserve the estate  
10 of the ward for the ward's needs. If no conservator for the estate of  
11 the ward has been appointed, a summary guardian may:

12 (a) Institute proceedings to compel any person under a  
13 duty to support the ward or to pay sums for the welfare of the ward  
14 to perform such person's duty;

15 (b) Apply for private or governmental benefits to which  
16 the ward may be entitled;

17 (c) Receive money and tangible property deliverable to  
18 the ward and apply the money and property for support, care, and  
19 education of the ward; and

20 (d) Enter into contractual arrangements on behalf of the  
21 ward.

22 Sec. 5. (1) A summary guardian is not required to have  
23 training under section 30-2627 and shall serve without bond.

24 (2) Resignation or removal of a summary guardian shall be  
25 governed by section 30-2616. The summary guardianship may terminate

1 as provided in section 7 of this act. The authority and  
2 responsibility of a summary guardian for an incapacitated person  
3 terminates upon the death of the summary guardian or ward, upon the  
4 determination of incapacity of the summary guardian, or upon removal  
5 or resignation as provided in section 30-2623. Termination does not  
6 affect the summary guardian's liability for prior acts nor the  
7 summary guardian's obligation to account for funds and assets of the  
8 ward.

9           Sec. 6. (1) If no conservator for the estate of the ward  
10 has been appointed, a summary guardian shall, within sixty days after  
11 the date of filing the summary guardian affidavit, prepare and file  
12 with the court located where the ward resides a complete inventory of  
13 the ward's estate together with the summary guardian's oath or  
14 affirmation that the inventory is complete and accurate so far as the  
15 summary guardian is informed.

16           (2) Each year thereafter, the summary guardian shall file  
17 with the court a report stating (a) the total money received and  
18 itemizing the nature and value of any other property received on  
19 behalf of the ward in the prior year, (b) the total expenditures on  
20 behalf of the ward in the prior year, and (c) the value of the ward's  
21 estate as of the date of the report.

22           Sec. 7. If the report of the ward required in section 7  
23 of this act states that the estate of the ward is valued at more than  
24 ten thousand dollars or that the total money in the prior year  
25 received on behalf of the ward exceeds twelve thousand dollars, the

1 court shall appoint a guardian according to the procedures set forth  
2 in section 30-2620. Upon such appointment, the summary guardianship  
3 terminates. The amounts set forth in this section and in section 1 of  
4 this act shall be adjusted by the Supreme Court for inflation as  
5 reflected by the United States Department of Labor, Bureau of Labor  
6 Statistics, Consumer Price Index for All Urban Consumers, United  
7 States City Average, All Items Factor, or an equivalent successor  
8 index, from the operative date of this act to the end of the year  
9 next preceding the report.

10           Sec. 8. Section 30-2201, Revised Statutes Cumulative  
11 Supplement, 2012, is amended to read:

12           30-2201 Sections 30-2201 to 30-2902, 30-3901 to 30-3923,  
13 and 30-4001 to 30-4045 and sections 1 to 7 of this act shall be known  
14 and may be cited as the Nebraska Probate Code.

15           Sec. 9. Section 30-2601, Revised Statutes Cumulative  
16 Supplement, 2012, is amended to read:

17           30-2601 Unless otherwise apparent from the context, in  
18 the Nebraska Probate Code:

19           (1) Incapacitated person means any person who is impaired  
20 by reason of mental illness, mental deficiency, physical illness or  
21 disability, chronic use of drugs, chronic intoxication, or other  
22 cause (except minority) to the extent that the person lacks  
23 sufficient understanding or capacity to make or communicate  
24 responsible decisions concerning himself or herself;

25           (2) A protective proceeding is a proceeding under the

1 provisions of section 30-2630 to determine that a person cannot  
2 effectively manage or apply his or her estate to necessary ends,  
3 either because the person lacks the ability or is otherwise  
4 inconvenienced, or because the person is a minor, and to secure  
5 administration of the person's estate by a conservator or other  
6 appropriate relief;

7 (3) A protected person is a minor or other person for  
8 whom a conservator has been appointed or other protective order has  
9 been made;

10 (4) A ward is a person for whom a guardian has been  
11 appointed. A minor ward is a minor for whom a guardian has been  
12 appointed solely because of minority;

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

15 (6) Limited guardianship means any guardianship which is  
16 not a full guardianship; ~~and~~

17 (7) Summary guardianship means a guardianship under  
18 sections 1 to 7 of this act; and

19 ~~(7)~~ (8) For purposes of article 26 of the Nebraska  
20 Probate Code and sections 1 to 7 of this act, interested person means  
21 children, spouses, those persons who would be the heirs if the ward  
22 or person alleged to be incapacitated died without leaving a valid  
23 last will and testament who are adults and any trustee of any trust  
24 executed by the ward or person alleged to be incapacitated. The  
25 meaning of interested person as it relates to particular persons may



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

7           Sec. 10. This act becomes operative on January 1, 2014.

8           Sec. 11. Original sections 30-2201 and 30-2601, Revised  
9 Statutes Cumulative Supplement, 2012, are repealed.