

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 43**

Introduced by Coash, 27.

Read first time January 08, 2015

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Nebraska Probate Code; to amend  
2 sections 30-2619, 30-3002, 30-3003, 30-3004, and 30-3005, Reissue  
3 Revised Statutes of Nebraska, and section 30-2201, Revised Statutes  
4 Cumulative Supplement, 2014; to provide for appointment of standby  
5 guardians for incapacitated persons; to transfer and change  
6 provisions regarding recovery of estate assets; to provide for  
7 recovery of assets of wards as prescribed; to provide enforcement  
8 procedures; to harmonize provisions; and to repeal the original  
9 sections.

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

1 Section 1. Section 30-2201, Revised Statutes Cumulative Supplement,  
2 2014, is amended to read:

3 30-2201 Sections 30-2201 to 30-2902, 30-3901 to 30-3923, and 30-4001  
4 to 30-4045, sections 3 to 8 of this act, and the Public Guardianship Act  
5 shall be known and may be cited as the Nebraska Probate Code.

6 Sec. 2. Section 30-2619, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8 30-2619 (a) The person alleged to be incapacitated or any person  
9 interested in his or her welfare may petition for a finding of incapacity  
10 and appointment of a guardian. The petition shall be verified and shall  
11 contain specific allegations with regard to each of the areas as provided  
12 under section 30-2619.01 in which the petitioner claims that the person  
13 alleged to be incapacitated lacks sufficient understanding to make or  
14 communicate responsible decisions concerning his or her own person. An  
15 interested person may file a motion to make more definite and certain  
16 requesting a specific description of the functional limitations and  
17 physical and mental condition of the person alleged to be incapacitated  
18 with the specific reasons prompting the request for guardianship.

19 (b) Upon the filing of a petition, the court shall set a date for  
20 hearing on the issues of incapacity and unless the person alleged to be  
21 incapacitated has retained counsel of his or her own choice or has  
22 otherwise indicated a desire for an attorney of his or her own choice,  
23 the court may appoint an attorney to represent him or her in the  
24 proceeding. The court may appoint a guardian ad litem to advocate for the  
25 best interests of the person alleged to be incapacitated.

26 (c) The person alleged to be incapacitated may be examined by a  
27 physician appointed by the court. The physician shall submit his or her  
28 report in writing to the court and may be interviewed by a visitor, if so  
29 appointed pursuant to sections 30-2619.01 and 30-2624, sent by the court.

30 (d) The person alleged to be incapacitated is entitled to be present  
31 at the hearing in person and to see and hear all evidence bearing upon

1 his or her condition. He or she is entitled to be present by counsel, to  
2 compel the attendance of witnesses, to present evidence, to cross-examine  
3 witnesses, including the court-appointed physician and the visitor  
4 appointed by the court pursuant to sections 30-2619.01 and 30-2624, and  
5 to appeal any final orders or judgments. The issue may be determined at a  
6 closed hearing only if the person alleged to be incapacitated or his or  
7 her counsel so requests.

8 (e) At any hearing conducted under this section, the court may  
9 designate one or more standby guardians of the person whose appointment  
10 will become effective immediately upon the death, unwillingness or  
11 inability to act, resignation, or removal by the court of the initially  
12 appointed guardian. The standby guardian shall have the same powers and  
13 duties as the initially appointed guardian. The standby guardian shall  
14 receive a copy of the order establishing or modifying the initial  
15 guardianship and the order designating the standby guardian. Upon  
16 assuming office, the standby guardian shall so notify the court in  
17 writing. Upon notification, the court shall issue new letters of  
18 guardianship that specify that the standby guardianship is permanent.

19 Sec. 3. For purposes of sections 3 to 8 of this act:

20 (1) Agent of the ward includes any person appointed as an agent  
21 under a power of attorney executed by or on behalf of a ward or which  
22 purports to have been executed by or on behalf of a ward;

23 (2) Conservator or guardian includes a special fiduciary appointed  
24 by a court to investigate the actions of an agent of the ward, the  
25 conservator, or the guardian;

26 (3) Personal representative includes a special administrator; and

27 (4) Ward means an incapacitated person or a protected person as  
28 defined in section 30-2601.

29 Sec. 4. Section 30-3002, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31 ~~30-3002~~ If a any personal representative, heir, devisee, creditor,

1 or other person interested in the estate of any deceased person or a  
2 conservator or guardian for a ward complains ~~shall complain~~ to the judge  
3 of the county court, upon an application under ~~on an~~ oath given on  
4 information and belief, that (1) any person may have concealed,  
5 embezzled, carried away, or disposed of any money or personal property ~~r~~  
6 ~~goods, or chattels~~ of the deceased or the ward, ~~or that~~ (2) such person  
7 may have in his or her possession or knowledge any deeds, conveyances,  
8 bonds, contracts, or other writings, which contain evidence of or tend to  
9 disclose the right, title, interest, or claim of the deceased or the ward  
10 to any real or personal estate, ~~r~~ or any claim or demand, (3) such person  
11 may have in his or her possession any will of the deceased or any power  
12 of attorney, advance health care directive, or power of attorney for  
13 health care decisions executed by the ward, or (4) such person may have  
14 information or knowledge withheld by the respondent from the personal  
15 representative, conservator, or guardian and needed by the personal  
16 representative, conservator, or guardian for the recovery of any property  
17 by suit or otherwise ~~or any will of the deceased~~, the judge may cite such  
18 person to appear before the court of probate. Any personal  
19 representative, heir, devisee, creditor, conservator, guardian, or other  
20 person interested in the estate of such deceased person or the ward may  
21 examine such person under ~~upon~~ oath upon the matter of such complaint or  
22 direct interrogatories to him or her. The citation may also direct the  
23 person cited to bring with him or her, for examination by the judge and  
24 parties interested, any such documents or writings, or any will of the  
25 deceased, which may be in his or her possession or under his or her  
26 control.

27 Sec. 5. Section 30-3003, Reissue Revised Statutes of Nebraska, is  
28 amended to read:

29 ~~30-3003~~ If the person ~~so~~ cited under section 4 of this act refuses  
30 (1) shall refuse to appear and submit to such examination, (2) or to  
31 answer such interrogatories as may be put to him or her touching the

1 matter of such complaint, or (3) to bring with him or her any of the  
2 documents or writings set forth in the citation which may be in his or  
3 her possession or control, the court may, by warrant, commit such person  
4 ~~him~~ to the county jail of the county to remain in custody until he or she  
5 submits ~~shall submit~~ to the order of the court. All such interrogatories  
6 and answers shall be in writing, ~~and~~ shall be signed by the party  
7 examined, and shall be filed in the county court.

8       Sec. 6. Section 30-3004, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

10       ~~30-3004~~ The judge of the county court, upon the complaint under ~~on~~  
11 oath of any personal representative, may cite any person who has ~~shall~~  
12 ~~have~~ been entrusted by such personal representative with any part of the  
13 estate of the deceased person, to appear before such court, and may  
14 require such person to render under oath a full account, ~~on oath,~~ of any  
15 money, goods, chattels, bonds, accounts, or other papers belonging to  
16 such estate which ~~shall~~ have come into ~~to~~ his or her possession, in trust  
17 for such personal representative, and of his or her proceedings thereon.  
18 If ~~, and if~~ a person so cited refuses ~~shall refuse~~ to appear and render  
19 such account, the court may proceed against such person ~~him~~ as provided  
20 in section 5 of this act ~~30-3003~~.

21       Sec. 7. The judge of the county court, upon the complaint under  
22 oath of any conservator or guardian, may cite any person who has been  
23 entrusted by such conservator or guardian with any part of the estate of  
24 the ward or any agent of the ward to appear before such court and may  
25 require such person to render under oath a full account of any money,  
26 goods, chattels, bonds, accounts, or other papers belonging to such  
27 estate which have come into his or her possession, in trust for such  
28 ward, conservator, or guardian, and of his or her proceedings thereon. If  
29 a person so cited refuses to appear and render such account, the court  
30 may proceed against such person as provided in section 5 of this act.

31       Sec. 8. Section 30-3005, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 ~~30-3005~~ (1) If any such person as described in sections 4 to 7 of  
3 this act ~~30-3002 to 30-3004~~ is not in the county where administration is  
4 granted, the proceedings under sections 4 to 7 of this act ~~30-3002 to~~  
5 ~~30-3004~~ may be had before the county judge of the county where such  
6 person resides or may be found. A certified copy of the written  
7 interrogatories, if any, and the examination or other proceeding thereon  
8 or connected therewith shall be filed in the county court of the county  
9 where administration is granted. If the person so cited refuses to appear  
10 or answer such interrogatories as may be allowed to be put to him or her  
11 touching the matter charged, such person he may be punished as provided  
12 in section 5 of this act ~~30-3003~~.

13 (2) If the respondent is the personal representative, conservator,  
14 or guardian, the court may appoint a special administrator or other  
15 special fiduciary to represent the estate or the ward.

16 Sec. 9. Original sections 30-2619, 30-3002, 30-3003, 30-3004, and  
17 30-3005, Reissue Revised Statutes of Nebraska, and section 30-2201,  
18 Revised Statutes Cumulative Supplement, 2014, are repealed.