

LEGISLATIVE BILL 43

Approved by the Governor February 26, 2015

Introduced by Coash, 27.

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

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

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

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

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

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

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

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

(d) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see and hear all evidence bearing upon his or her condition. He or she is entitled to be present by counsel, to compel the attendance of witnesses, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor appointed by the court pursuant to sections 30-2619.01 and 30-2624, and to appeal any final orders or judgments. The issue may be determined at a closed hearing only if the person alleged to be incapacitated or his or her counsel so requests.

(e) At any hearing conducted under this section, the court may designate one or more standby guardians of the person whose appointment will become effective immediately upon the death, unwillingness or inability to act, resignation, or removal by the court of the initially appointed guardian and upon compliance with any rules promulgated by the Supreme Court. The standby guardian shall have the same powers and duties as the initially appointed guardian. The standby guardian shall receive a copy of the order establishing or modifying the initial guardianship and the order designating the standby guardian. Upon assuming office, the standby guardian shall so notify the court in writing. Upon notification and upon compliance with any rules promulgated by the Supreme Court, the court shall issue new letters of guardianship that specify that the standby guardianship appointment is permanent. A standby guardian shall complete the training required by section 30-2601.01 at the time or times required by rules promulgated by the Supreme Court or as otherwise provided by order of the county court.

(f) The Public Guardian shall not be appointed as a standby guardian.

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

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

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

(3) Personal representative includes a special administrator; and

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

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

~~30-3002~~ If a any personal representative, heir, devisee, creditor, or other person interested in the estate of any deceased person or a conservator or guardian for a ward complains shall complain to the judge of the county court, upon an application under ~~on an~~ oath given on information and belief, that (1) any person may have concealed, embezzled, carried away, or disposed of any money or personal property, goods, or chattels of the deceased or the ward, or that (2) such person may have in his or her possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, which contain evidence of or tend to disclose the right, title, interest, or claim of the deceased or the ward to any real or personal estate, or any claim or demand, (3) such person may have in his or her possession any will of the deceased or any power of attorney, advance health care directive, or power of attorney for health care decisions executed by the ward, or (4) such person may have information or knowledge withheld by the respondent from the personal representative, conservator, or guardian and needed by the personal representative, conservator, or guardian for the recovery of any property by suit or otherwise or any will of the deceased, the judge may cite such person to appear before the court of probate. Any personal representative, heir, devisee, creditor, conservator, guardian, or other person interested in the estate of such deceased person or the ward may examine such person under ~~upon~~ oath upon the matter of such complaint or direct interrogatories to him or her. The citation may also direct the person cited to bring with him or her, for examination by the judge and parties interested, any such documents or writings, or any will of the deceased, which may be in his or her possession or under his or her control.

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

~~30-3003~~ If the person so cited under section 4 of this act refuses (1) shall refuse to appear and submit to such examination, (2) or to answer such interrogatories as may be put to him or her touching the matter of such complaint, or (3) to bring with him or her any of the documents or writings set forth in the citation which may be in his or her possession or control, the court may, by warrant, commit such person him to the county jail of the county to remain in custody until he or she submits shall submit to the order of the court. All such interrogatories and answers shall be in writing, ~~and~~ shall be signed by the party examined, and shall be filed in the county court.

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

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

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

Sec. 8. Section 30-3005, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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