

LEGISLATIVE BILL 593

Approved by the Governor May 30, 2019

Introduced by Briese, 41.

A BILL FOR AN ACT relating to medical assistance recovery; to amend sections 68-919, 68-989, 68-990, 71-605, and 77-2018.02, Reissue Revised Statutes of Nebraska, and sections 30-2483, 30-3880, 30-3881, 30-3882, and 33-109, Revised Statutes Cumulative Supplement, 2018; to change and eliminate provisions relating to medical assistance reimbursement claims and liens; to provide for retroactivity; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 30-2483, Revised Statutes Cumulative Supplement, 2018, is amended to read:

30-2483 (a) Unless notice has already been given under this article and except when an appointment of a personal representative is made pursuant to subdivision (4) of section 30-2408, the clerk of the court upon the appointment of a personal representative shall publish a notice once a week for three successive weeks in a newspaper of general circulation in the county announcing the appointment and the address of the personal representative, and notifying creditors of the estate to present their claims within two months after the date of the first publication of the notice or be forever barred. The first publication shall be made within thirty days after the appointment. The party instituting or maintaining the proceeding or his or her attorney is required to mail the published notice and give proof thereof in accordance with section 25-520.01.

(b) If the decedent was fifty-five years of age or older or resided in a medical institution as defined in subsection (1) of section 68-919, the notice shall also be provided to the Department of Health and Human Services with the decedent's social security number and, if the decedent was predeceased by a spouse, the name and social security number of such spouse. The notice shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivering notice on its web site. Any notice that fails to conform with such manner is void and constitutes neither notice to the department nor a waiver application for purposes of any statute or regulation that requires that a notice or waiver application be provided to the department.

Sec. 2. Section 30-3880, Revised Statutes Cumulative Supplement, 2018, is amended to read:

30-3880 (UTC 815) (a) A trustee, without authorization by the court, may exercise:

- (1) powers conferred by the terms of the trust; and
- (2) except as limited by the terms of the trust:
 - (A) all powers over the trust property which an unmarried competent owner has over individually owned property;
 - (B) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and
 - (C) any other powers conferred by the Nebraska Uniform Trust Code.

(b) The exercise of a power is subject to the fiduciary duties prescribed by sections 30-3866 to 30-3882.

(c) The changes made to this section by this legislative bill shall apply retroactively to August 30, 2015.

~~(c) After the death of the trustor occurring after August 30, 2015, a trustee of a revocable trust which has become irrevocable by reason of the death of the trustor shall not transfer trust property to a beneficiary described in section 77-2004 or 77-2005 in relation to the trustor prior to satisfaction of all claims for medical assistance reimbursement pursuant to section 68-919 to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the trustor's probate estate. The Department of Health and Human Services may, upon application of a trustee, waive the restriction on transfers established by this subsection in cases in which the department determines that either there is no medical assistance reimbursement due or after the proposed transfer is made there will be sufficient assets remaining in the trust or trustor's probate estate to satisfy all such claims for medical assistance reimbursement. If there is no medical assistance reimbursement due, the department shall waive the restriction within sixty days after receipt of the trustee's request for waiver and the deceased trustor's name and social security number and, if the trustor was predeceased by a spouse, the name and social security number of such spouse. A trustee who is a financial institution as defined in section 77-3801, a trust company chartered pursuant to the Nebraska Trust Company Act, or an attorney licensed to practice in this state may distribute assets from the trust prior to the receipt of the waiver from the department if the trustee signs a recital under oath that states the decedent's name and social security number and, if the decedent was predeceased by a spouse, the name and social security number of~~

~~such spouse, and that the trustor was not a recipient of medical assistance and no claims for medical assistance exist under section 68-919. The trustee shall send such recital to the department. A trustee who makes such a recital knowing the recital is false becomes personally liable for medical assistance reimbursement pursuant to section 68-919 to the extent of the assets distributed from the trust necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's probate estate. The request for waiver and the recital described in this subsection shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivery on its web site. Any request for waiver or recital that fails to conform with such manner is void.~~

Sec. 3. Section 30-3881, Revised Statutes Cumulative Supplement, 2018, is amended to read:

30-3881 (UTC 816) (a) Without limiting the authority conferred by section 30-3880, a trustee may:

(1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) acquire or sell property, for cash or on credit, at public or private sale;

(3) exchange, partition, or otherwise change the character of trust property;

(4) deposit trust money in an account in a regulated financial-service institution;

(5) borrow money, including from the trustee, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(A) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(B) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(C) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(D) deposit the securities with a depository or other regulated financial-service institution;

(8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(A) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(B) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(C) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees

and agents of the trust, and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state, and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee loans made by others to the beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(B) paying it to the beneficiary's custodian under the Nebraska Uniform Transfers to Minors Act or custodial trustee under the Nebraska Uniform Custodial Trust Act, and, for that purpose, creating a custodianship or custodial trust;

(C) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(D) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

(b) The changes made to this section by this legislative bill shall apply retroactively to August 30, 2015.

~~(b) After the death of the trustor occurring after August 30, 2015, a trustee of a revocable trust which has become irrevocable by reason of the death of the trustor shall not transfer trust property to a beneficiary described in section 77-2004 or 77-2005 in relation to the trustor prior to satisfaction of all claims for medical assistance reimbursement pursuant to section 68-919 to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the trustor's probate estate. The Department of Health and Human Services may, upon application of a trustee, waive the restriction on transfers established by this subsection in cases in which the department determines that either there is no medical assistance reimbursement due or after the proposed transfer is made there will be sufficient assets remaining in the trust or trustor's probate estate to satisfy all such claims for medical assistance reimbursement. If there is no medical assistance reimbursement due, the department shall waive the restriction within sixty days after receipt of the trustee's request for waiver and the deceased trustor's name and social security number and, if the trustor was predeceased by a spouse, the name and social security number of such spouse. A trustee who is a financial institution as defined in section 77-3801, a trust company chartered pursuant to the Nebraska Trust Company Act, or an attorney licensed to practice in this state may distribute assets from the trust prior to the receipt of the waiver from the department if the trustee signs a recital under oath that states the decedent's name and social security number and, if the decedent was predeceased by a spouse, the name and social security number of such spouse, and that the trustor was not a recipient of medical assistance and no claims for medical assistance exist under section 68-919. The trustee shall send such recital to the department. A trustee who makes such a recital knowing the recital is false becomes personally liable for medical assistance reimbursement pursuant to section 68-919 to the extent of the assets distributed from the trust necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's probate estate. The request for waiver and the recital described in this subsection shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the~~

~~acceptable manner of delivery on its web site. Any request for waiver or recital that fails to conform with such manner is void.~~

Sec. 4. Section 30-3882, Revised Statutes Cumulative Supplement, 2018, is amended to read:

~~30-3882 (UTC 817) (a) Upon Except as limited in subsection (d) of this section, upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.~~

~~(b) Upon Except as limited in subsection (d) of this section, upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.~~

~~(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:~~

~~(1) it was induced by improper conduct of the trustee; or~~

~~(2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.~~

~~(d) The changes made to this section by this legislative bill shall apply retroactively to August 30, 2015.~~

~~(d) After the death of the trustor occurring after August 30, 2015, a trustee of a revocable trust which has become irrevocable by reason of the death of the trustor shall not transfer trust property to a beneficiary described in section 77-2004 or 77-2005 in relation to the trustor prior to satisfaction of all claims for medical assistance reimbursement pursuant to section 68-919 to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the trustor's probate estate. The Department of Health and Human Services may, upon application of a trustee, waive the restriction on transfers established by this subsection in cases in which the department determines that either there is no medical assistance reimbursement due or after the proposed transfer is made there will be sufficient assets remaining in the trust or trustor's probate estate to satisfy all such claims for medical assistance reimbursement. If there is no medical assistance reimbursement due, the department shall waive the restriction within sixty days after receipt of the trustee's request for waiver and the deceased trustor's name and social security number and, if the trustor was predeceased by a spouse, the name and social security number of such spouse. A trustee who is a financial institution as defined in section 77-3801, a trust company chartered pursuant to the Nebraska Trust Company Act, or an attorney licensed to practice in this state may distribute assets from the trust prior to the receipt of the waiver from the department if the trustee signs a recital under oath that states the decedent's name and social security number and, if the decedent was predeceased by a spouse, the name and social security number of such spouse, and that the trustor was not a recipient of medical assistance and no claims for medical assistance exist under section 68-919. The trustee shall send such recital to the department. A trustee who makes such a recital knowing the recital is false becomes personally liable for medical assistance reimbursement pursuant to section 68-919 to the extent of the assets distributed from the trust necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's probate estate. The request for waiver and the recital described in this subsection shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivery on its web site. Any request for waiver or recital that fails to conform with such manner is void.~~

Sec. 5. Section 33-109, Revised Statutes Cumulative Supplement, 2018, is amended to read:

33-109 (1) The register of deeds and the county clerk shall receive for recording a deed, mortgage, or release, recording and indexing of a will, recording and indexing of a decree in a testate estate, recording proof of publication, or recording any other instrument, a fee of ten dollars for the first page and six dollars for each additional page. Two dollars and fifty cents of the ten-dollar fee for recording the first page and fifty cents of the six-dollar fee for recording each additional page shall be used exclusively for the purposes of preserving and maintaining public records of the office of the register of deeds and for modernization and technology needs relating to such records and preserving and maintaining public records of a register of deeds office that has been consolidated with another county office pursuant to section 22-417 and for modernization and technology needs relating to such records. The funds allocated under this subsection shall not be substituted for other allocations of county general funds to the register of deeds office or any other county office for the purposes enumerated in this subsection.

(2) The cost for a certified copy of any instrument filed or recorded in the office of county clerk or register of deeds shall be one dollar and fifty cents per page.

~~(3) No fees shall be received for recording instruments for the Department of Health and Human Services pursuant to section 68-990.~~

Sec. 6. Section 68-919, Reissue Revised Statutes of Nebraska, is amended to read:

68-919 (1) The recipient of medical assistance under the medical

assistance program shall be indebted to the department for the total amount paid for medical assistance on behalf of the recipient if:

(a) The recipient was fifty-five years of age or older at the time the medical assistance was provided; or

(b) The recipient resided in a medical institution and, at the time of institutionalization or application for medical assistance, whichever is later, the department determines that the recipient could not have reasonably been expected to be discharged and resume living at home. For purposes of this section, medical institution means a nursing facility, an intermediate care facility for persons with developmental disabilities, or an inpatient hospital.

(2) The debt accruing under subsection (1) of this section arises during the life of the recipient but shall be held in abeyance until the death of the recipient. Any such debt to the department that exists when the recipient dies shall be recovered only after the death of the recipient's spouse, if any, and only after the recipient is not survived by a child who either is under twenty-one years of age or is blind or totally and permanently disabled as defined by the Supplemental Security Income criteria. In recovering such debt, the department shall not foreclose on a lien on the home of the recipient (a) if a sibling of the recipient with an equity interest in the home has lawfully resided in the home for at least one year before the recipient's admission and has lived there continuously since the date of the recipient's admission or (b) while the home is the residence of an adult child who has lived in the recipient's home for at least two years immediately before the recipient was institutionalized, has lived there continuously since that time, and can establish to the satisfaction of the department that he or she provided care that delayed the recipient's admission.

(3) The debt shall include the total amount of medical assistance provided when the recipient was fifty-five years of age or older or during a period of institutionalization as described in subsection (1) of this section and shall not include interest.

~~(4)(a) This subsection applies to the fullest extent permitted by 42 U.S.C. 1396p, as such section existed on January 1, 2017. It is the intent of the Legislature that the debt specified in subsection (1) of this section be collected by the department before any portion of the estate of a recipient of medical assistance is enjoyed by or transferred to a person not specified in subsection (2) of this section as a result of the death of such recipient. The debt may be recovered from the estate of a recipient of medical assistance. The department shall undertake all reasonable and cost-effective measures to enforce recovery under the Medicaid Assistance Act. All persons specified in subsections (2) and (4) of this section shall cooperate with the department in the enforcement of recovery under the act.~~

(b) For purposes of this section:

(i) Estate of a recipient of medical assistance means any real estate, personal property, or other asset in which the recipient had any legal title or interest at or immediately preceding the time of the recipient's death, to the extent of such interests. In furtherance and not in limitation of the foregoing, the estate of a recipient of medical assistance also includes:

(A) Assets to be transferred to a beneficiary described in section 77-2004 or 77-2005 in relation to the recipient through a revocable trust or other similar arrangement which has become irrevocable by reason of the recipient's death; and

(B) Notwithstanding anything to the contrary in subdivision (3) or (4) of section 68-923, assets conveyed or otherwise transferred to a survivor, an heir, an assignee, a beneficiary, or a devisee of the recipient of medical assistance through joint tenancy, tenancy in common, transfer on death deed, survivorship, conveyance of a remainder interest, retention of a life estate or of an estate for a period of time, living trust, or other arrangement by which value or possession is transferred to or realized by the beneficiary of the conveyance or transfer at or as a result of the recipient's death ~~to the full extent authorized in 42 U.S.C. 1396p(b)(4)(B)~~. Such other arrangements include insurance policies or annuities in which the recipient of medical assistance had at the time of death any incidents of ownership of the policy or annuity or the power to designate beneficiaries and any pension rights or completed retirement plans or accounts of the recipient. A completed retirement plan or account is one which because of the death of the recipient of medical assistance ceases to have elements of retirement relating to such recipient and under which one or more beneficiaries exist after such recipient's death; and

(ii) Estate of a recipient of medical assistance does not include:

~~(A) Insurance policies in proportion to the premiums and other payments to the insurance carrier that were paid by someone other than the recipient of medical assistance or the recipient's spouse;~~

~~(B) Insurance proceeds and accounts in institutions under federal supervision or supervision of the Department of Banking and Finance or Department of Insurance to the extent subject to a security interest where the secured party is not a related transferee as defined in section 68-990;~~

~~(A) (C) Insurance proceeds, any trust account subject to the Burial Pre-Need Sale Act, or any limited lines funeral insurance policy to the extent used to pay for funeral, burial, or cremation expenses of the recipient of medical assistance;~~

~~(B) (D) Conveyances of real estate made prior to August 24, 2017, that are subject to the grantor's retention of a life estate or an estate for a period of time; and~~

~~(C) (E) Any pension rights or completed retirement plans to the extent~~

that such rights or plans are exempt from claims for reimbursement of medical assistance under federal law.

(c) As to any interest in property created after August 24, 2017, and for as long as any portion of the debt arising under subsection (1) of this section remains unpaid, the death of the recipient of medical assistance shall not trigger a change in the rights to possession, enjoyment, access, income, or otherwise that the recipient had at the time of death and the personal representative of the recipient's estate is empowered to and shall exercise or enjoy such rights for the purpose of paying such debt, including, but not limited to, renting such property held as a life estate, severing joint tenancies, bringing partition actions, claiming equitable rights of contribution, or taking other actions otherwise appropriate to effect the intent of this section. Such rights shall survive the death of the recipient of medical assistance and shall be administered, marshaled, and disposed of for the purposes of this section. In the event that a claim for reimbursement is made as to some, but not all, nonprobate transferees or assets, the party or owner against whom the claim is asserted may seek equitable contribution toward the claim from the other nonprobate transferees or assets in a court of applicable jurisdiction. Except as otherwise provided in this section and except for the right of the department to recover the debt from such interests in property, this subsection in and of itself does not create any rights in any other person or entity.

(d) The department, upon application of the personal representative of an estate, any person or entity otherwise authorized under the Nebraska Probate Code to act on behalf of a decedent, any person or entity having an interest in assets of the decedent which are subject to this subsection, a successor trustee of a revocable trust or other similar arrangement which has become irrevocable by reason of the decedent's death, or any other person or entity holding assets of the decedent described in this subsection, shall timely certify to the applicant, that as of a designated date, whether medical assistance reimbursement is due or an application for medical assistance was pending that may result in medical assistance reimbursement due. An application for a certificate under this subdivision shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivery on its web site. Any application that fails to conform with such manner is void. Notwithstanding the lack of an order by a court designating the applicant as a person or entity who may receive information protected by applicable privacy laws, the applicant shall have the authority of a personal representative for the limited purpose of seeking and obtaining from the department this certification. If, in response to a certification request, the department certifies that reimbursement for medical assistance is due, the department may release some or all of the property of a decedent from the provisions of this subsection.

~~(d) Unless includable in the estate of a recipient of medical assistance pursuant to this section as it existed prior to August 24, 2017, an interest in real estate transferred to a related transferee as defined in section 68-990 and vested in such related transferee prior to August 24, 2017, shall not be part of the estate of the recipient of medical assistance unless required disclosures were not made at the time of application for medical assistance under section 68-989 or at the time of any review by the department of the recipient's eligibility for medical assistance.~~

~~(e) The department, upon application of the personal representative of an estate, any person otherwise authorized under the Nebraska Probate Code to act on behalf of a decedent, any person having an interest in assets of the decedent which are subject to this subsection, a successor trustee of a revocable trust or other similar arrangement which has become irrevocable by reason of the decedent's death, or any other person holding assets of the decedent described in this subsection, shall release some or all of the property of a decedent from the provisions of this subsection in cases in which the department determines that either there is no medical assistance reimbursement due and no application for medical assistance has been filed on behalf of the decedent or that there will be sufficient assets of the probate estate of the decedent to satisfy all such claims for medical assistance reimbursement. If there is no medical assistance reimbursement due and no application for medical assistance has been filed on behalf of the decedent, the department shall certify to the applicant that no reimbursement is due as expeditiously as reasonably possible but in no event more than sixty days after receipt of the application, the decedent's name and social security number, and, if the decedent was predeceased by a spouse, the name and social security number of such spouse. Failure of the department to timely make such certification shall subject the department to payment of the applicant's reasonable attorney's fees and costs in an action for mandamus filed in either Lancaster County or the county in which the probate action or inheritance tax proceeding is pending. The department shall annually report to the Legislature the amount and circumstances of such attorney's fees and costs paid. If the department determines that there is medical assistance reimbursement due or that an application for medical assistance has been filed on behalf of the decedent, the department shall mail notice thereof to the applicant within such sixty-day period. Notice stating that a demand for notice has been filed pursuant to subsection (3) of section 71-605 shall suffice for purposes of the notice requirement. Failure of the department to provide the required notice discharges the debt created under this section unless the department has~~

~~previously filed a demand for notice under subsection (3) of section 71-605. An application under this subdivision shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivery on its web site. Any application that fails to conform with such manner is void. The department shall not require, as part of the application, that an applicant submit information beyond what is needed to implement this subdivision. Notwithstanding the lack of an order by a court designating a trustee or successor trustee of a revocable trust or other similar arrangement which has become irrevocable by reason of the decedent's death as a person who may receive information in conjunction with applicable privacy law, such person shall have the authority of a personal representative with respect to the trust assets, including, but not limited to, the authority to seek and to obtain from the department information protected by applicable privacy law, and the department shall release the information requested to the trustee to the extent it is relevant to resolving issues relating to reimbursement of medical assistance or the administration thereof.~~

~~(f) In the event that the department does not seek to recover medical assistance reimbursement for a period of eighteen months after it is entitled to do so, the county attorney of the county in which the recipient of medical assistance last resided, or in the case of real estate, the county where the real estate is located, may seek the consent of the department to enforce the rights of the department. The department shall determine whether or not to grant such consent within sixty days after the consent is requested. If the department fails to make a determination within the sixty-day period, such consent shall be deemed to have been granted. The department may not unreasonably withhold consent to the bringing of such action. If the county attorney brings such an action, the county shall be entitled to such reasonable attorney's fees as determined by the court with jurisdiction of the action. The department shall give its full cooperation to such county attorney.~~

~~(e) (g) An action for recovery of the debt created under subsection (1) of this section may be brought by the department against the estate of a recipient of medical assistance as defined in subdivision (4)(b) of this section at any time before five years after the last of the following events:~~

- ~~(i) The death of the recipient of medical assistance;~~
- ~~(ii) The death of the recipient's spouse, if applicable;~~
- ~~(iii) The attainment of the age of twenty-one years by the youngest of the recipient's minor children, if applicable; or~~
- ~~(iv) A determination that any adult child of the recipient is no longer blind or totally and permanently disabled as defined by the Supplemental Security Income criteria, if applicable.~~

~~(5) In any probate proceedings in which the department has filed a claim under this section, no additional evidence of foundation shall be required for the admission of the department's payment record supporting its claim if the payment record bears the seal of the department, is certified as a true copy, and bears the signature of an authorized representative of the department.~~

~~(6) The department may waive or compromise its claim, in whole or in part, if the department determines that enforcement of the claim would not be in the best interests of the state or would result in undue hardship as provided in rules and regulations of the department.~~

~~(7)(a) (7) Whenever the department has provided medical assistance because of sickness or injury to any person resulting from a third party's wrongful act or negligence and the person has recovered or may recover damages from such third party, to the fullest extent permitted by federal law and understandings entered into between the state and federal government, the department shall have the right to recover the medical assistance it paid from any amounts that the person has received as follows: or may receive from or on behalf of the third party. When, with the consent of the department,~~

~~(i) In those cases in which the person is fully compensated by the recovery, the department shall be fully reimbursed subject to its contribution to attorney's fees and costs as provided in subdivision (b) of this subsection; or~~

~~(ii) In those cases in which the person is not fully compensated by the recovery, the department shall be reimbursed that portion of the recovery that represents the same proportionate reduction of medical expenses paid that the recovery amount bears to full compensation of the person subject to its contributions to attorney's fees and costs as provided in subdivision (b) of this subsection.~~

~~(b) When an action or claim is brought by the person alone and the person incurs or will incur a personal liability to pay attorney's fees and costs of litigation or costs incurred in pursuit of a claim, to the fullest extent permitted by federal law and understandings entered into between the state and federal government, the department's claim for reimbursement of the medical assistance provided to the person shall be reduced by an amount twenty-five percent of the full amount of the judgment, award, or settlement, which the person may retain, though otherwise subject to applicable law including but not limited to eligibility criteria, and a pro rata share that represents the department's reasonable pro rata share of attorney's fees paid by the person and that portion of the costs of litigation or the costs incurred in pursuit of a claim, determined by multiplying the amount of the costs of litigation or the costs incurred in pursuit of a claim by the ratio of the full amount of benefit expenditures made by the department to or on behalf of the person to the full amount of the judgment, award, or settlement. The department may not~~

~~unreasonably withhold consent to the bringing of such action or claim. The department shall determine whether or not to grant such consent within thirty days after the consent is requested. If the department fails to make a determination within the thirty-day period, such consent shall be deemed to have been granted.~~

(8) The department may adopt and promulgate rules and regulations to carry out this section.

(9) The changes made to this section by this legislative bill shall apply retroactively to August 30, 2015.

Sec. 7. Section 68-989, Reissue Revised Statutes of Nebraska, is amended to read:

68-989 (1) This section shall apply to the fullest extent permitted by federal law and understandings entered into between the state and the federal government. An applicant for medical assistance, or a person acting on behalf of the applicant, shall disclose at the time of application and, to the extent not owned at the time of application, at the time of any subsequent review of the applicant's eligibility for medical assistance all of his or her interests in any assets, including, but not limited to, any security, bank account, intellectual property right, contractual or lease right, real estate, trust, corporation, limited liability company, or other entity, whether such interest is direct or indirect ~~or~~ vested or contingent, ~~or otherwise~~. The applicant or a person acting on behalf of the applicant shall also disclose any ~~:(a) Any~~ income derived from such interests and the source of the income. ~~;~~ and

~~(b) Whether the income is generated directly or indirectly from (i) the applicant's spouse or an individual who is related to the applicant as described in section 77-2004 or 77-2005 or (ii) an entity controlled by one or more individuals described in subdivision (1)(b)(i) of this section. For purposes of this subdivision, control means individuals listed in subdivision (1)(b)(i) of this section together own or have the option to acquire more than fifty percent of the entity.~~

(2) If the applicant or a person acting on behalf of the applicant willfully fails to make the disclosures required in this section, any medical assistance obtained as a result of such failure is deemed unlawfully obtained and the department shall seek recovery of such medical assistance from the applicant or the estate of the recipient of medical assistance as defined in subdivision (4)(b) of section 68-919.

~~(3)(a) (3)~~ If income is derived from a related party as described in subdivision ~~(3)(c) (1)(b)~~ of this section, the department shall determine whether the income is or, in the case of a written lease, whether the terms of the lease at the time it was entered into were commercially reasonable and consistent with income or lease terms derived in the relevant market area and negotiated at arms length between parties who are not related.

~~(b)~~ If the department determines that the income or lease fails to meet these requirements, such income or lease shall be considered a transfer of the applicant's assets for less than full consideration and the department shall consider the resulting shortfall, to the fullest extent permitted by federal law, when determining eligibility for medical assistance or any share of cost or as otherwise required by law. The burden of proof of commercial reasonableness rests with the applicant. The department's determination on commercial reasonableness may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

~~(c)~~ A related party is (i) the applicant's spouse or an individual who is related to the applicant as described in section 77-2004 or 77-2005 or (ii) an entity controlled by one or more individuals described in subdivision (1)(c)(i) of this section. For purposes of this subdivision, control means individuals listed in subdivision (1)(c)(i) of this section who together own or have the option to acquire more than fifty percent of the entity.

(4) An action for recovery of medical assistance obtained in violation of this section may be brought by the department against the applicant or against the estate of the recipient of medical assistance as defined in subdivision (4)(b) of section 68-919 at any time before five years after the death of both the applicant and the applicant's spouse, if any.

(5) The department may adopt and promulgate rules and regulations to carry out this section. The rules and regulations may include guidance on the commercial reasonableness of lease terms.

Sec. 8. Section 68-990, Reissue Revised Statutes of Nebraska, is amended to read:

68-990 (1) For purposes of this section:

(a) Related transferee means:

(i) An individual who is related to the transferor as described in section 77-2004 or 77-2005;

(ii) An entity controlled by one or more individuals described in subdivision (1)(a)(i) of this section. For purposes of this subdivision, control means individuals described in subdivision (1)(a)(i) of this section together own or have the option to acquire more than fifty percent of the entity; or

(iii) An irrevocable trust in which an individual described in subdivision (1)(a)(i) of this section is a beneficiary; and

(b) Related transferee does not include the recipient's spouse, if any, or a child who either is under twenty-one years of age or is blind or totally and permanently disabled as defined by Supplemental Security Income criteria.

(2) This section shall apply to the fullest extent permitted by federal law and understandings entered into between the state and the federal

government. This section provides security for the recovery of the indebtedness to the department for medical assistance as provided in section 68-919. This section applies to transfers of real estate made on or after August 24, 2017. If, during the transferor's lifetime, an interest in real estate is irrevocably transferred to a related transferee for less than full consideration and the real estate transferred to the related transferee is subject to rights, actual or constructive possession, or powers retained by the transferor in a deed or other instrument, the interest in the real estate when acquired by the related transferee is subject to a lien in favor of the State of Nebraska for medical assistance reimbursement pursuant to section 68-919 to the extent necessary to secure payment in full of any claim remaining unpaid after application of the assets of the transferor's probate estate, not to exceed the amount determined under subsection (6) of this section. The lien does not attach to any interest retained by the transferor. Except as provided in this section, the lien applies to medical assistance provided before, at the same time as, or after the filing of the notice of lien under subsection (4) of this section.

(3) Within fifteen days after receipt of a statement required by section 76-214 indicating that the underlying real estate transfer was between relatives or, if to a trustee, where the trustor or settlor and the beneficiary are relatives, the register of deeds shall send a copy of such statement, together with the parcel identification number, if ascertainable, to the department. The copy shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivering the copy on its web site or otherwise communicate the manner of delivery to the registers of deeds.

(4) The lien imposed by subsection (2) of this section becomes effective upon the filing of a notice of lien in accordance with this subsection. The department may file a notice of the lien imposed by subsection (2) of this section only after the department receives an application for medical assistance on behalf of a transferor. The notice must be filed in the office of the register of deeds of the county or counties in which the real estate subject to the lien is located. The notice must provide the legal description of the real estate subject to the lien, specify the amount then secured by the lien, and indicate that the lien also covers any future medical assistance provided to the transferor. The department shall provide the register of deeds with a self-addressed return envelope bearing sufficient postage for purposes of returning to the department a file-stamped copy of the notice of lien, which the register of deeds shall mail to the department. The lien is not valid against the owner of an interest in real estate received by a grantee who is not a related transferee pursuant to a deed or other instrument if such deed or other instrument is filed prior to the notice of lien. A lien that is not valid under this subsection shall be released by the department upon notice thereof from such grantee or a subsequent bona fide purchaser. A lien is valid against any subsequent creditor only if notice of such lien has been filed by the department in accordance with this subsection. Any mortgage or trust deed recorded prior to the filing of a notice of lien shall have priority over such lien. Except as provided in subsection (5) of this section, any optional future advance or advance necessary to protect the security secured by the mortgage or trust deed shall have the same priority as the mortgage or trust deed.

(5) Any optional future advance made pursuant to a mortgage or trust deed on real estate recorded prior to the filing of a notice of lien under subsection (4) of this section shall be junior to such lien only if the optional future advance is made after:

(a) A notice of lien has been filed by the department in accordance with subsection (4) of this section; and

(b) Written notice of the filing for record of such notice of lien has been received by the mortgagee or beneficiary at the address of the mortgagee or beneficiary set forth in the mortgage or trust deed or, if the mortgage or trust deed has been assigned, by the assignee at the address of the most recent assignee reflected in a recorded assignment of the mortgage or trust deed. The notice under this subdivision shall be sent by the department by certified mail to the applicable mortgagee, beneficiary, or assignee.

(6)(a) The lien authorized in this section is limited to the lesser of (i) the amount necessary to fully satisfy any reimbursement obligations remaining unpaid after application of any assets from the transferor's probate estate or (ii) the actual value of the real estate at the time that the lien is enforced minus the consideration adjustment and minus the cost of the improvements made to the real estate by or on behalf of the related transferee, if any.

(b) For purposes of this subsection:

(i) Actual value has the same meaning as in section 77-112;

(ii) Consideration adjustment means the amount of consideration paid by the related transferee to the transferor for the real estate multiplied by the growth factor; and

(iii) Growth factor means the actual value of the real estate at the time the lien is enforced divided by the actual value of the real estate at the time the consideration was paid.

(c) The burden of proof for showing the consideration paid for the real estate, the cost of any improvements to the real estate, and the actual value of the real estate rests with the related transferee or his or her successor in interest.

(7) If a deed or other instrument transferring an interest in real estate contains a recital acknowledged by the grantor stating that the grantee is not

a related transferee, the real estate being transferred shall not be subject to the lien imposed by this section. A related transferee who takes possession or otherwise enjoys the benefits of the transfer knowing the recital is false becomes personally liable for medical assistance reimbursement to the extent necessary to discharge any claim remaining unpaid after application of the assets of the transferor's probate estate, not to exceed the amount determined under subsection (6) of this section.

(8) The department shall release or subordinate the lien authorized in this section upon application by the related transferee in which the related transferee agrees to indemnify the department for medical assistance reimbursement pursuant to section 68-919 to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's probate estate, not to exceed the amount determined under subsection (6) of this section. The department may require the application submitted pursuant to this subsection to be accompanied by good and sufficient sureties or other evidence determined by the department to be sufficient to secure the liability. The department shall also release the lien upon a satisfactory showing of undue hardship or a showing that the interest subject to the lien is not one from which medical assistance reimbursement may be had.

(9)(a) Any indemnity and any lien shall be released upon:

(i) Notice delivered to the department, by certified mail, return receipt requested, of (A) the death and identification, including the social security number, of the transferor, (B) the legal description of the real estate subject to the indemnity or lien, and (C) the names and addresses of the owners of record of the real estate; and

(ii) The department either (A) filing a release of lien with the register of deeds of the county or counties in which the real estate subject to the lien is located or (B) not filing an action to foreclose the lien or collect on the indemnity within one year after delivery of the notice required under subdivision (9)(a)(i) of this section.

(b) Proof of delivery of such notice shall be made by filing a copy of the notice and a copy of the certified mail return receipt with the register of deeds of the county or counties in which the real estate subject to the lien is located.

(10) The department may adopt and promulgate rules and regulations to carry out this section.

(11) This section is null and void as of August 24, 2017.

Sec. 9. Section 71-605, Reissue Revised Statutes of Nebraska, is amended to read:

71-605 (1) The funeral director and embalmer in charge of the funeral of any person dying in the State of Nebraska shall cause a certificate of death to be filled out with all the particulars contained in the standard form adopted and promulgated by the department. Such standard form shall include a space for veteran status and the period of service in the armed forces of the United States and a statement of the cause of death made by a person holding a valid license as a physician, physician assistant, or nurse practitioner who last attended the deceased. The standard form shall also include the deceased's social security number and a notice that, pursuant to section 30-2413, demands for notice which may affect the estate of the deceased are filed with the county court in the county where the decedent resided at the time of death. Death and fetal death certificates shall be completed by the funeral directors and embalmers and physicians, physician assistants, or nurse practitioners for the purpose of filing with the department and providing child support enforcement information pursuant to section 43-3340.

(2) The physician, physician assistant, or nurse practitioner shall have the responsibility and duty to complete and sign by electronic means pursuant to section 71-603.01, within twenty-four hours from the time of death, that part of the certificate of death entitled medical certificate of death. In the case of a death when no person licensed as a physician, physician assistant, or nurse practitioner was in attendance, the funeral director and embalmer shall refer the case to the county attorney who shall have the responsibility and duty to complete and sign the death certificate by electronic means pursuant to section 71-603.01.

No cause of death shall be certified in the case of the sudden and unexpected death of a child between the ages of one week and three years until an autopsy is performed at county expense by a qualified pathologist pursuant to section 23-1824. The parents or guardian shall be notified of the results of the autopsy by their physician, physician assistant, nurse practitioner, community health official, or county coroner within forty-eight hours. The term sudden infant death syndrome shall be entered on the death certificate as the principal cause of death when the term is appropriately descriptive of the pathology findings and circumstances surrounding the death of a child.

If the circumstances show it possible that death was caused by neglect, violence, or any unlawful means, the case shall be referred to the county attorney for investigation and certification. The county attorney shall, within twenty-four hours after taking charge of the case, state the cause of death as ascertained, giving as far as possible the means or instrument which produced the death. All death certificates shall show clearly the cause, disease, or sequence of causes ending in death. If the cause of death cannot be determined within the period of time stated above, the death certificate shall be filed to establish the fact of death. As soon as possible thereafter, and not more than six weeks later, supplemental information as to the cause, disease, or sequence of causes ending in death shall be filed with the department to complete the

record. For all certificates stated in terms that are indefinite, insufficient, or unsatisfactory for classification, inquiry shall be made to the person completing the certificate to secure the necessary information to correct or complete the record.

(3) A completed death certificate shall be filed with the department within five business days after the date of death. If it is impossible to complete the certificate of death within five business days, the funeral director and embalmer shall notify the department of the reason for the delay and file the certificate as soon as possible. ~~Within ten days after the filing of the certificate of death and prior to the issuance of any certified copies of the certificate of death, the department shall search its records to determine if the deceased had applied for or received medical assistance under the Medical Assistance Act. If the deceased made such application or received such assistance, the department shall, before or contemporaneously with the issuance of the first certified copy of the certificate of death, file a demand for notice pursuant to section 30-2413 in the county court of the county in which the decedent was domiciled at the time of death. The department shall annually report the following to the Legislature:~~

~~(a) The number of demands for notice filed pursuant to this section; and~~

~~(b) The number of times in the prior year that the time between a request for a certified copy of the certificate of death and the mailing of such certificate exceeded twenty-one days.~~

(4) Before any dead human body may be cremated, a cremation permit shall first be signed electronically by the county attorney, or by his or her authorized representative as designated by the county attorney in writing, of the county in which the death occurred on an electronic form prescribed and furnished by the department.

(5) A permit for disinterment shall be required prior to disinterment of a dead human body. The permit shall be issued by the department to a licensed funeral director and embalmer upon proper application. The request for disinterment shall be made by the person listed in section 30-2223 or a county attorney on a form furnished by the department. The application shall be signed by the funeral director and embalmer who will be directly supervising the disinterment. When the disinterment occurs, the funeral director and embalmer shall sign the permit giving the date of disinterment and file the permit with the department within ten days of the disinterment.

(6) When a request is made under subsection (5) of this section for the disinterment of more than one dead human body, an order from a court of competent jurisdiction shall be submitted to the department prior to the issuance of a permit for disinterment. The order shall include, but not be limited to, the number of bodies to be disinterred if that number can be ascertained, the method and details of transportation of the disinterred bodies, the place of reinterment, and the reason for disinterment. No sexton or other person in charge of a cemetery shall allow the disinterment of a body without first receiving from the department a disinterment permit properly completed.

(7) No dead human body shall be removed from the state for final disposition without a transit permit issued by the funeral director and embalmer having charge of the body in Nebraska, except that when the death is subject to investigation, the transit permit shall not be issued by the funeral director and embalmer without authorization of the county attorney of the county in which the death occurred. No agent of any transportation company shall allow the shipment of any body without the properly completed transit permit prepared in duplicate.

(8) The interment, disinterment, or reinterment of a dead human body shall be performed under the direct supervision of a licensed funeral director and embalmer, except that hospital disposition may be made of the remains of a child born dead pursuant to section 71-20,121.

(9) All transit permits issued in accordance with the law of the place where the death occurred in a state other than Nebraska shall be signed by the funeral director and embalmer in charge of burial and forwarded to the department within five business days after the interment takes place.

(10) The changes made to this section by this legislative bill shall apply retroactively to August 24, 2017.

Sec. 10. Section 77-2018.02, Reissue Revised Statutes of Nebraska, is amended to read:

77-2018.02 (1) In the absence of any proceeding brought under Chapter 30, article 24 or 25, in this state, proceedings for the determination of the tax may be instituted in the county court of the county where the property or any part thereof which might be subject to tax is situated.

(2) Upon the filing of the petition referred to in subsection (1) of this section, the county court shall order the petition set for hearing, not less than two nor more than four weeks after the date of filing the petition, and shall cause notice thereof to be given to all persons interested in the estate of the deceased and the property described in the petition, except as provided in subsections (4) and (5) of this section, in the manner provided for in subsection (3) of this section.

(3) The notice, provided for by subsection (2) of this section, shall be given by one publication in a legal newspaper of the county or, in the absence of such legal newspaper, then in a legal newspaper of some adjoining county of general circulation in the county. In addition to such publication of notice, personal service of notice of the hearing shall be had upon the county attorney of each county in which the property described in the petition is located, at

least one week prior to the hearing.

(4) If it appears to the county court, upon the filing of the petition, by any person other than the county attorney, that no assessment of inheritance tax could result, it shall forthwith enter thereon an order directing the county attorney to show cause, within one week from the service thereof, why determination should not be made that no inheritance tax is due on account of the property described in the petition and the potential lien thereof on such property extinguished. Upon service of such order to show cause and failure of such showing by the county attorney, notice of such hearing by publication shall be dispensed with, and the petitioner shall be entitled without delay to a determination of no tax due on account of the property described in the petition, and any potential lien shall be extinguished.

(5) If it appears to the county court that (a) the county attorney of each county in which the property described in the petition is located has executed a waiver of notice upon him or her to show cause, or of the time and place of hearing, and has entered a voluntary appearance in such proceeding in behalf of the county and the State of Nebraska, and (b) either (i) all persons against whom an inheritance tax may be assessed are either a petitioner or have executed a waiver of notice upon them to show cause, or of the time and place of hearing, and have entered a voluntary appearance, or (ii) a party to the proceeding has agreed to pay to the proper counties the full inheritance tax so determined, the court may dispense with the notice provided for in subsections (2) and (3) of this section and proceed without delay to make a determination of inheritance tax, if any, due on account of the property described in the petition.

(6) If the decedent was fifty-five years of age or older or resided in a medical institution as defined in subsection (1) of section 68-919, a notice of the filing of the petition referred to in subsection (1) of this section shall be provided to the Department of Health and Human Services with the decedent's social security number and, if the decedent was predeceased by a spouse, the name and social security number of such spouse. A certificate of the providing of the notice to the department shall be filed in the inheritance tax proceedings by an attorney for the petitioner or, if there is no attorney, by the petitioner, prior to the entry of an order pursuant to this section. The notice shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivering notice on its web site. Any notice that fails to conform with such manner is void ~~and constitutes neither notice to the department nor a waiver application for purposes of any statute or regulation that requires that a notice or waiver application be provided to the department.~~

Sec. 11. Original sections 68-919, 68-989, 68-990, 71-605, and 77-2018.02, Reissue Revised Statutes of Nebraska, and sections 30-2483, 30-3880, 30-3881, 30-3882, and 33-109, Revised Statutes Cumulative Supplement, 2018, are repealed.

Sec. 12. Since an emergency exists, this act takes effect when passed and approved according to law.