

ONE HUNDRED SEVENTH LEGISLATURE - FIRST SESSION - 2021
COMMITTEE STATEMENT
LB501

Hearing Date: Thursday February 04, 2021
Committee On: Judiciary
Introducer: Flood
One Liner: Adopt the Uniform Easement Relocation Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 8 Senators Brandt, DeBoer, Geist, Lathrop, McKinney, Morfeld, Pansing
Brooks, Slama
Nay:
Absent:
Present Not Voting:

Oral Testimony:

Proponents: Senator Mike Flood Larry Ruth Steven Willborn	Representing: Introducer Nebraska Uniform Law Commission Nebraska Uniform Law Commission
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Opponents:	Representing:
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Neutral:	Representing:
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Submitted Written Testimony:

Proponents: Lee Orton	Representing: Nebraska State Irrigation Association
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Opponents:	Representing:
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Neutral:	Representing:
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Summary of purpose and/or changes:

LB 501 would adopt the Uniform Easement Relocation Act. The Act provides a mechanism for an easement (not including public utility) to be relocated through a civil action. The Act specifies conditions that must be met and the process for filings and orders under the Act.

Section by section
Section 1 Title: Uniform Easement Relocation Act

Section 2 Definitions: Appurtenant easement

Conservation easement
Dominant estate
Easement
Easement holder
Easement in gross
Lessee of record
Negative easement
Person
Public utility easement
Real property
Record
Security instrument
Security interest holder
Servient estate
Title evidence
Unit
Utility

Section 3 Act cannot be used for relocating public utility, conservation, or negative easements and does not apply to easements by consent.

Section 4 Act cannot be used if relocation: lessens utility of the easement; increases the burden on the easement holder; disrupt the use by the holder during or after relocation; impair the value of the dominant estate; or impair the collateral in the servient estate.

Section 5 Establishes the process for the civil action by the servient holder: Includes a summons to the easement holder, security interest holder, and any lessee of the dominant estate. Complaint must contain: current and proposed locations of the easement, reasons for relocation (Sec 4); and that the servient estate owner has made attempts to contact public utility, conservation and negative easement holders. Allows easement holders, lessees, and security interest holders to waive right to contest.

Section 6 Establishes criteria for a court order. Order must contain: statement that is issued under the Uniform Act; recite the record data of the instrument creating the easement; indicate the original location and the new location; describe mitigation conditions required during relocation; include provisions for payment by servient estate holder for expenses in relocation, servient estate holder must file certified copy of order in land records before beginning and affidavit upon completion of relocation.

Section 7 Servient estate owner is responsible for expenses including: construction costs, required permits, insurance, title work, necessary experts, and maintenance.

Section 8 After court order, parties required to act in good faith to facilitate relocation.

Section 9 When relocation substantially complete, servient owner files land record and notifies easement holder via certified mail.

Section 10 Easement relocation is not new transfer or grant, does not affect priority of easement, and is not a breach of leases or transfer restrictions.

Section 11 Right to relocate may not be waived even if creation of easement prohibits, requires consent of easement holder, or location is fixed by other documentation.

Section 12 In applying Act, consideration given to uniform application.

Section 13 Act modifies or supercedes certain federal acts, but does not authorize electronic delivery.

Section 14 Act applies to easement created before and after effective date.

Section 15 Severability clause.

Explanation of amendments:

AM 526 is a white copy amendment that would combine four additional bills into LB 501. LB 593 that proposes to adopt the Uniform Foreign-Country Money Judgements Act, LB 470 which would adopt the Uniform Powers of Appointment Act, LB 348 changing provisions relating to succession of real property by affidavit and LB 403 addressing recovery of medical assistance from an estate are added to LB 501.

LB 593

Motion to include LB 593 as part of Committee Amendment to LB 501.

Vote Results 8-0-0-0

Voting Aye: Senators Brandt, DeBoer, Geist, Lathrop, McKinney, Morfeld, Pansing Brooks & Slama

Testifiers at Public Hearing on February 4, 2021-

Proponents:

Senator Julie Slama, Introducer

Steven Willborn, Nebraska Uniform Law Commission

LB 593 would adopt the Uniform Foreign-Country Money Judgements Recognition Act and the Uniform Registration of Canadian Money Judgements Act. These two acts are interrelated and the Canadian Money Act references portions of the Foreign-Country Money Act.

The Uniform Foreign-Country Money Judgements Recognition Act establishes a process for local courts to recognize judgements from other countries and provide enforcement provisions. The Uniform Registration of Canadian Money Judgements Act establishes a registration process for Canadian judgements.

Section by section

Section 1 Title: Uniform Foreign-Country Money Judgements Recognition Act

Section 2 Definitions: Foreign country; Foreign-country judgement

Section 3 Act applies if: grants or denies money judgement, and is final and enforceable. Act does not apply if: for taxes; fines or penalties; domestic relation judgements of divorce, support or maintenance. Burden is on party seeking recognition.

Section 4 Judgement not recognized if: Foreign judicial system is not impartial or does not have due process; no personal jurisdiction, no subject matter jurisdiction. A court need not recognize if: No notice to defendant; party deprived of ability to present case; judgement is repugnant to policy of state or US; conflicts with another final judgement; contrary to agreement between parties; circumstances raise issues of integrity of foreign court; not compatible with due process. Party opposing recognition has burden of proof.

Section 5 Recognition not refused for personal jurisdiction if: defendant personally served in foreign country; voluntarily appeared at proceeding; defendant agreed to submit to jurisdiction; defendant domiciled in country when proceeding began; business office in foreign country; or defendant operated motor vehicle or airplane in country. List is not exclusive and court may recognize other basis for personal jurisdiction.

Section 6 Can be filed as original matter or counterclaim, or affirmative defense in pending matter.

Section 7 If foreign judgement recognized, it is conclusive between parties and enforceable in same manner as local judgement.

Section 8 If appeal is taken, proceeding stayed.

Section 9 Action must be commenced within 15 years of foreign country judgement.

Section 10 Consideration given to uniformity in applying and construing Act.

Section 11 Act does not prevent recognition of judgements not within scope of Act.

Section 12 Act applies to actions begun after effective date of Act.

Section 13 Title: Uniform Registration of Canadian Money Judgements Act.

Section 14 Definitions: Canada; Canadian judgement.

Section 15 Act applies to actions with both money judgements and other relief and judgement containing both may be registered under the Act but Act applies only to money portion.

Section 16 Provides process for registering Canadian judgement with clerk of court by person seeking recognition or their attorney. Registration documents include: name and last known address of person against whom the judgement was issued; a copy of the judgement; the portion of the judgement being registered including the amount of interest accrued; costs and expenses; attorneys fees; and post judgement costs. A statement is also required that provides that the judgement is final and is within the scope of the Act as well as an undefined fee. Subsection (d) provides a form to be completed for registration.

Section 17 Provides that a Canadian judgement cannot be enforced by sale or seizure of property until 31 days after notice of registration. Other actions to prevent dissipation or removal of property are available.

Section 18 Requires notice to be provided to person of registration of judgement against them in same manner as foreign country money judgement and provides for information contained in the notice. Proof of service is filed with court clerk.

Section 19 Allows motion to vacate the registration within 30 days after service. Motion may only include grounds to deny recognition of the judgement under the Foreign-Country Money Judgement Act or failure to comply with requirements for registration.

Section 20 Allows court to stay enforcement while determination on motion is pending. Court grants stay if likelihood of success on motion but may require security as a condition of stay.

Section 21 The Canadian Money Judgements Act supplements the Foreign-Country Money Judgements Act. A person can

seek recognition of a Canadian judgement either through the Canadian Act or the Foreign-Country Act. If a registration is vacated, due to an improper filing under the Canadian Act, the person can either cure the defect or seek recognition under the Foreign-Country Act.

Section 22 Consideration given to uniformity in applying and construing Act.

Section 23 Act applies to actions commenced after effective date of act.

The provisions of LB 593 can be found in Sections 1 to 23 of AM526.

LB 470

Motion to include LB 470 as part of Committee Amendment to LB 501.

Vote Results 8-0-0-0

Voting Aye: Senators Brandt, DeBoer, Geist, Lathrop, McKinney, Morfeld, Pansing Brooks & Slama

Testifiers at Public Hearing on February 4, 2021-

Proponents:

Senator Wendy DeBoer, Introducer

Larry Ruth, Nebraska Uniform Law Commission

Ramzi Hynek, Nebraska Uniform Law Commission

LB 470 seeks to adopt the Uniform Powers of Appointment Act. Powers of Appointment are an estate planning tool (typically with trusts) that allow appointment of a person to redirect or designate another as the recipient or owner of property. This provides some flexibility as circumstances change over time.

The Uniform Act provides a common framework for the structure of the appointment by outlining the creation and exercise of appointment powers rather than the current framework that is based on common law and court decisions.

Section by section

Section 1 Title: Uniform Powers of Appointment Act.

Section 2 Definitions:

Appointee

Appointive property

Blanket exercise clause

Donor

Exclusionary power of appointment

General power of appointment

Gift in default clause

Impermissible appointee

Instrument

Nongeneral power of appointment

Permissible appointee

Person

Power of appointment

Powerholder

Presently exercisable power of appointment

Record
Specific exercise clause
Taker in default of appointment
Terms of instrument

Section 3 Provides language that the creation and revocation of the power of appointment is governed by the donor's domicile while the exercise, release, or renunciation of the power is governed by the powerholder's domicile.

Section 4 States that common law and principles of equity supplement the Act.

Section 5 Provides criteria for the creation of power of appointment including implementing the donor's intent, that an exercise of a power of appointment cannot create a power of appointment and that the power cannot be created in a deceased person.

Section 6 Provides that a powerholder cannot transfer a power of appointment and the power lapses if the powerholder dies.

Section 7 Provides criteria that unless as provided under section 9 of the Act, the power is general in nature.

Section 8 Provides that if the criteria in section 7 is not met (exercisable only at powerholder's death, permissible appointees are a limited class), the power is nongeneral.

Section 9 Describes the nature of the power (nongeneral or exclusionary) if there is an adverse party.

Section 10 Allows for revocation or amendment by the donor if the instrument specifically creates or reserves the ability.

Section 11 Provides that the appointment is exercised if permitted by law and the indicate the powerholder's intent and meets the requirements of section 14.

Section 12 Provides details regarding residuary clauses and when indicates an intent to exercise a power of appointment. Can be in a powerholder's will or revocable trust, cannot have a gift or default clause, and must be general power.

Section 13 Blanket exercise clause is a power of the powerholder. If the powerholder is also the donor the blanket exercise clause does not extend to the power unless there is no gift in default.

Section 14 Describes when substantial compliance with the formal requirement of appointment is sufficient.

Section 15 Describes and limits a powerholder's ability to make appointments under a general power of appointment as well as abilities under a nongeneral appointment.

Section 16 Provides that an appointment to deceased person is ineffective but a powerholder can create a power of appointment in a decendant of the deceased under certain circumstances.

Section 17 Exercise of a power of appointment to an impermissible appointee is ineffective.

Section 18 if a powerholder exercises a power of appointment and also disposes of the property, the property must be allocated according to the powerholder's intent.

Section 19 Provides a process, if the powerholder makes an ineffective appointment, to pass the property to the powerholder or under a reversionary interest to the donor.

Section 20 Provides a process, if the powerholder releases or fails to exercise a general power of appointment, to pass the property to powerholder or under a reversionary interest to the donor.

Section 21 Provides a process, if the powerholder releases, ineffectively exercises or fails to exercise a nongeneral power or appointment, to pass the property to powerholder or under a reversionary interest to the donor.

Section 22 Allows a taker to share in the unappointed property if he powerholder makes a partial appointment to the taker.

Section 23 Provides that if a powerholder appoints a taker to the property, and the appointee could have taken under a gift in default clause, the appointee takes the property under the clause.

Section 24 A powerholder may revoke or amend an exercise of appointment if the powerholder reserves the ability to revoke or amend (and the instrument does not prohibit) or the terms creating the power provides it is revocable or amendable.

Section 25 Allows a powerholder or appointee to renounce all or part of an interest in the property.

Section 26 A powerholder may release a power of appointment unless the terms of the instrument prevent a release.

Section 27 Provides the process for releasing the power of appointment.

Section 28 Allows for the revocation or amendment of a release.

Section 29 Allows a powerholder to contract to not exercise a power or to exercise a power if it does confer a benefit to an impermissible appointee.

Section 30 Allows a powerholder to contract to exercise if the powerholder is the donor or the power is reserved in a revocable trust.

Section 31 The remedy for a powerholder's breach of contract is limited to damages from the appointive property or specific performance.

Section 32 Provides when an appointment may be subject to the claim of a creditor.

Section 33 Provides when appointive property subject to a general power of appointment by other than the powerholder is subject to a claim by creditors.

Section 34 Provides language on how property withdrawn from a trust is treated and how treated on the lapse, release or waiver of trust property.

Section 35 Provides that property subject to a nongeneral appointment is generally exempt from creditor claims.

Section 36 Provides language to encourage uniform application of the Act.

Section 37 Provides that the Act supercedes certain federal provisions, but does not modify or supercede provisions regarding electronic delivery of notices.

Section 38 Provides that the Act: applies to powers of appointment prior to the effective date; applies to judicial proceedings after the effective date; rules of construction apply to instruments executed before the effective date unless contrary terms are in the instrument.

The provisions of LB 470 can be found in Sections 24 to 61 of AM526

LB 348

Motion to include LB 348 as part of Committee Amendment to LB 501.

Vote Results 8-0-0-0

Voting Aye: Senators Brandt, DeBoer, Geist, Lathrop, McKinney, Morfeld, Pansing Brooks & Slama

Testifiers at Public Hearing on February 4, 2021-

Proponents:

Senator Adam Morfeld, Introducer

Kara Brostrom, Nebraska State Bar Association

Opponents:

Roy Hahn, Nebraska Land Title Association

LB 348 makes changes to the affidavit process in small (less than \$50 K) estate situations involving real property. The bill would allow just one successor claimant to file the affidavit and would list all other potential claimants within the affidavit. Currently all successor claimants must sign the affidavit.

The bill also modifies the value of the property by adjusting the value to 100% of market value rather than the current assessed value. The proposal also would require a copy of the will (if there is one) to be attached to the affidavit.

Section by section

Section 1 Amends 30-24,129 to alter the affidavit filed when small amounts of real property are involved in an estate. The affidavit would be required to be signed by anyone claiming to be a successor and would list other potential successors to the property. The bill also adjust the valuation of the property to 100% of market value rather than the current assessed valuation. The bill would also require that a will (if it exists) is attached to the affidavit.

Section 2 Repeals original section.

Portions of LB 348 can be found in Section 62 of AM526. Changes to the original version of LB 348 include removing language that allowed one successor to sign the affidavit and removing language adjusting the valuation of the property.

LB 403

Motion to include LB 403 as part of Committee Amendment to LB 501.

Vote Results 8-0-0-0

Voting Aye: Senators Brandt, DeBoer, Geist, Lathrop, McKinney, Morfeld, Pansing Brooks & Slama

Testifiers at Public Hearing on February 4, 2021-

Proponents:

Senator Julie Slama, Introducer

Frank Heinisch, Nebraska State Bar Association

Written Testimony in Lieu of Appearance

Bob Hallstrom, Nebraska Bankers Association

LB 403 addresses the recapture of medical assistance payments (Medicaid) from estates where the recipient had a life estate in property. The bill adds the recording of the life estate to the other dates that serve as the "look back" or statute of limitations for recapture.

Section by section

Section 1 Amends 68-919 that addresses recapture of medical assistance payments from estates by adding a "look back" deadline for seeking recovery in subsection (4)(e)(v). LB 403 adds the date of the recording of a life estate to the other 5 year recovery deadlines.

Section 2 Repeals original section.

Portions and changes to LB 403 can be found in Section 63 of AM526. Changes to the original version of LB 403 include removing current language regarding life estates and replacing it with treating life estates as other property conveyances with a five year look back.

The original provisions of LB 501 can be found in sections 64 to 77.

Steve Lathrop, Chairperson