

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 501

FINAL READING

Introduced by Flood, 19; DeBoer, 10.

Read first time January 19, 2021

Committee: Judiciary

1 A BILL FOR AN ACT relating to legal process; to amend section 30-24,129,
2 Reissue Revised Statutes of Nebraska, and section 68-919, Revised
3 Statutes Cumulative Supplement, 2020; to adopt the Uniform Foreign-
4 Country Money Judgments Recognition Act, the Uniform Registration of
5 Canadian Money Judgments Act, the Uniform Powers of Appointment Act,
6 and the Uniform Easement Relocation Act; to change provisions
7 relating to succession to real property; to redefine estate of a
8 recipient of medical assistance for purposes of claims against a
9 medical assistance recipient; to provide severability; and to repeal
10 the original sections.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 12 of this act shall be known and may be
2 cited as the Uniform Foreign-Country Money Judgments Recognition Act.

3 Sec. 2. In the Uniform Foreign-Country Money Judgments Recognition
4 Act:

5 (1) Foreign country means a government other than:

6 (A) the United States;

7 (B) a state, district, commonwealth, territory, or insular
8 possession of the United States; or

9 (C) any other government with regard to which the decision in this
10 state as to whether to recognize a judgment of that government's courts
11 is initially subject to determination under the Full Faith and Credit
12 Clause of the United States Constitution.

13 (2) Foreign-country judgment means a judgment of a court of a
14 foreign country.

15 Sec. 3. (a) Except as otherwise provided in subsection (b) of this
16 section, the Uniform Foreign-Country Money Judgments Recognition Act
17 applies to a foreign-country judgment to the extent that the judgment:

18 (1) grants or denies recovery of a sum of money; and

19 (2) under the law of the foreign country where rendered, is final,
20 conclusive, and enforceable.

21 (b) The Uniform Foreign-Country Money Judgments Recognition Act does
22 not apply to a foreign-country judgment, even if the judgment grants or
23 denies recovery of a sum of money, to the extent that the judgment is:

24 (1) a judgment for taxes;

25 (2) a fine or other penalty; or

26 (3) a judgment for divorce, support, or maintenance, or other
27 judgment rendered in connection with domestic relations.

28 (c) A party seeking recognition of a foreign-country judgment has
29 the burden of establishing that the Uniform Foreign-Country Money
30 Judgments Recognition Act applies to the foreign-country judgment.

31 Sec. 4. (a) Except as otherwise provided in subsections (b) and (c)

1 of this section, a court of this state shall recognize a foreign-country
2 judgment to which the Uniform Foreign-Country Money Judgments Recognition
3 Act applies.

4 (b) A court of this state may not recognize a foreign-country
5 judgment if:

6 (1) the judgment was rendered under a judicial system that does not
7 provide impartial tribunals or procedures compatible with the
8 requirements of due process of law;

9 (2) the foreign court did not have personal jurisdiction over the
10 defendant; or

11 (3) the foreign court did not have jurisdiction over the subject
12 matter.

13 (c) A court of this state need not recognize a foreign-country
14 judgment if:

15 (1) the defendant in the proceeding in the foreign court did not
16 receive notice of the proceeding in sufficient time to enable the
17 defendant to defend;

18 (2) the judgment was obtained by fraud that deprived the losing
19 party of an adequate opportunity to present its case;

20 (3) the judgment or the cause of action or claim for relief on which
21 the judgment is based is repugnant to the public policy of this state or
22 of the United States;

23 (4) the judgment conflicts with another final and conclusive
24 judgment;

25 (5) the proceeding in the foreign court was contrary to an agreement
26 between the parties under which the dispute in question was to be
27 determined otherwise than by proceedings in that foreign court;

28 (6) in the case of jurisdiction based only on personal service, the
29 foreign court was a seriously inconvenient forum for the trial of the
30 action;

31 (7) the judgment was rendered in circumstances that raise

1 substantial doubt about the integrity of the rendering court with respect
2 to the judgment; or

3 (8) the specific proceeding in the foreign court leading to the
4 judgment was not compatible with the requirements of due process of law.

5 (d) A party resisting recognition of a foreign-country judgment has
6 the burden of establishing that a ground for nonrecognition stated in
7 subsection (b) or (c) of this section exists.

8 Sec. 5. (a) A foreign-country judgment may not be refused
9 recognition for lack of personal jurisdiction if:

10 (1) the defendant was served with process personally in the foreign
11 country;

12 (2) the defendant voluntarily appeared in the proceeding, other than
13 for the purpose of protecting property seized or threatened with seizure
14 in the proceeding or of contesting the jurisdiction of the court over the
15 defendant;

16 (3) the defendant, before the commencement of the proceeding, had
17 agreed to submit to the jurisdiction of the foreign court with respect to
18 the subject matter involved;

19 (4) the defendant was domiciled in the foreign country when the
20 proceeding was instituted or was a corporation or other form of business
21 organization that had its principal place of business in, or was
22 organized under the laws of, the foreign country;

23 (5) the defendant had a business office in the foreign country and
24 the proceeding in the foreign court involved a cause of action or claim
25 for relief arising out of business done by the defendant through that
26 office in the foreign country; or

27 (6) the defendant operated a motor vehicle or airplane in the
28 foreign country and the proceeding involved a cause of action or claim
29 for relief arising out of that operation.

30 (b) The list of bases for personal jurisdiction in subsection (a) of
31 this section is not exclusive. The courts of this state may recognize

1 bases of personal jurisdiction other than those listed in subsection (a)
2 of this section as sufficient to support a foreign-country judgment.

3 Sec. 6. (a) If recognition of a foreign-country judgment is sought
4 as an original matter, the issue of recognition shall be raised by filing
5 an action seeking recognition of the foreign-country judgment.

6 (b) If recognition of a foreign-country judgment is sought in a
7 pending action, the issue of recognition may be raised by counterclaim,
8 cross-claim, or affirmative defense.

9 Sec. 7. If the court in a proceeding under section 6 of this act
10 finds that the foreign-country judgment is entitled to recognition under
11 the Uniform Foreign-Country Money Judgments Recognition Act then, to the
12 extent that the foreign-country judgment grants or denies recovery of a
13 sum of money, the foreign-country judgment is:

14 (1) conclusive between the parties to the same extent as the
15 judgment of a sister state entitled to full faith and credit in this
16 state would be conclusive; and

17 (2) enforceable in the same manner and to the same extent as a
18 judgment rendered in this state.

19 Sec. 8. If a party establishes that an appeal from a foreign-
20 country judgment is pending or will be taken, the court may stay any
21 proceedings with regard to the foreign-country judgment until the appeal
22 is concluded, the time for appeal expires, or the appellant has had
23 sufficient time to prosecute the appeal and has failed to do so.

24 Sec. 9. An action to recognize a foreign-country judgment must be
25 commenced within the earlier of the time during which the foreign-country
26 judgment is effective in the foreign country or fifteen years from the
27 date that the foreign-country judgment became effective in the foreign
28 country.

29 Sec. 10. In applying and construing the Uniform Foreign-Country
30 Money Judgments Recognition Act, consideration must be given to the need
31 to promote uniformity of the law with respect to its subject matter among

1 states that enact it.

2 Sec. 11. The Uniform Foreign-Country Money Judgments Recognition
3 Act does not prevent the recognition under principles of comity or
4 otherwise of a foreign-country judgment not within the scope of the
5 Uniform Foreign-Country Money Judgments Recognition Act.

6 Sec. 12. The Uniform Foreign-Country Money Judgments Recognition
7 Act applies to all actions commenced on or after the effective date of
8 this act in which the issue of recognition of a foreign-country judgment
9 is raised.

10 Sec. 13. Sections 13 to 23 of this act shall be known and may be
11 cited as the Uniform Registration of Canadian Money Judgments Act.

12 Sec. 14. In the Uniform Registration of Canadian Money Judgments
13 Act:

14 (1) Canada means the sovereign nation of Canada and its provinces
15 and territories. Canadian has a corresponding meaning.

16 (2) Canadian judgment means a judgment of a court of Canada, other
17 than a judgment that recognizes the judgment of another foreign country.

18 Sec. 15. (a) The Uniform Registration of Canadian Money Judgments
19 Act applies to a Canadian judgment to the extent the judgment is within
20 the scope of section 3 of this act, if recognition of the judgment is
21 sought to enforce the judgment.

22 (b) A Canadian judgment that grants both recovery of a sum of money
23 and other relief may be registered under the Uniform Registration of
24 Canadian Money Judgments Act, but only to the extent of the grant of
25 recovery of a sum of money.

26 (c) A Canadian judgment regarding subject matter both within and not
27 within the scope of the Uniform Registration of Canadian Money Judgments
28 Act may be registered under the act, but only to the extent the judgment
29 is with regard to subject matter within the scope of the act.

30 Sec. 16. (a) A person seeking recognition of a Canadian judgment
31 described in section 15 of this act to enforce the judgment may register

1 the judgment in the office of the clerk of a court in which an action for
2 recognition of the judgment could be filed under section 6 of this act.

3 (b) A registration under subsection (a) of this section must be
4 executed by the person registering the judgment or the person's attorney
5 and include:

6 (1) a copy of the Canadian judgment authenticated in the same manner
7 as a copy of a foreign judgment is authenticated in an action under
8 section 6 of this act as an accurate copy by the court that entered the
9 judgment;

10 (2) the name and address of the person registering the judgment;

11 (3) if the person registering the judgment is not the person in
12 whose favor the judgment was rendered, a statement describing the
13 interest the person registering the judgment has in the judgment which
14 entitles the person to seek its recognition and enforcement;

15 (4) the name and last-known address of the person against whom the
16 judgment is being registered;

17 (5) if the judgment is of the type described in subsection (b) or
18 (c) of section 15 of this act, a description of the part of the judgment
19 being registered;

20 (6) the amount of the judgment or part of the judgment being
21 registered, identifying:

22 (A) the amount of interest accrued as of the date of registration on
23 the judgment or part of the judgment being registered, the rate of
24 interest, the part of the judgment to which interest applies, and the
25 date when interest began to accrue;

26 (B) costs and expenses included in the judgment or part of the
27 judgment being registered, other than an amount awarded for attorney's
28 fees; and

29 (C) the amount of an award of attorney's fees included in the
30 judgment or part of the judgment being registered;

31 (7) the amount, as of the date of registration, of postjudgment

1 costs, expenses, and attorney's fees claimed by the person registering
2 the judgment or part of the judgment;

3 (8) the amount of the judgment or part of the judgment being
4 registered which has been satisfied as of the date of registration;

5 (9) a statement that:

6 (A) the judgment is final, conclusive, and enforceable under the law
7 of the Canadian jurisdiction in which it was rendered;

8 (B) the judgment or part of the judgment being registered is within
9 the scope of the Uniform Registration of Canadian Money Judgments Act;
10 and

11 (C) if a part of the judgment is being registered, the amounts
12 stated in the registration under subdivisions (6), (7), and (8) of this
13 subsection relate to the part;

14 (10) if the judgment is not in English, a certified translation of
15 the judgment into English; and

16 (11) a registration fee determined by the Supreme Court.

17 (c) On receipt of a registration that includes the documents,
18 information, and registration fee required by subsection (b) of this
19 section, the clerk shall file the registration, assign a docket number,
20 and enter the Canadian judgment in the court's docket.

21 (d) A registration substantially in the following form complies with
22 the registration requirements under subsection (b) of this section if the
23 registration includes the attachments specified in the form:

24 REGISTRATION OF CANADIAN MONEY JUDGMENT

25 Complete and file this form, together with the documents required by
26 Part V of this form, with the Clerk of Court. When stating an amount of
27 money, identify the currency in which the amount is stated.

28 PART I. IDENTIFICATION OF CANADIAN JUDGMENT

29 Canadian Court Rendering the Judgment:

30 Case/Docket Number in Canadian Court:

31 Name of Plaintiff(s):

1 Name of Defendant(s):

2 The Canadian Court entered the judgment on [Date] in

3 [City] in [Province or Territory]. The judgment

4 includes an award for the payment of money in favor of

5 in the amount of

6 If only part of the Canadian judgment is subject to registration

7 (see subsections (b) and (c) of section 15 of this act), describe the

8 part of the judgment being registered:

9 PART II. IDENTIFICATION OF PERSON REGISTERING JUDGMENT AND PERSON

10 AGAINST WHOM JUDGMENT IS BEING REGISTERED

11 Provide the following information for all persons seeking to

12 register the judgment under this registration and all persons against

13 whom the judgment is being registered under this registration.

14 Name of Person(s) Registering Judgment:

15 If a person registering the judgment is not the person in whose

16 favor the judgment was rendered, describe the interest the person

17 registering the judgment has in the judgment which entitles the person to

18 seek its recognition and enforcement:

19 Address of Person(s) Registering Judgment:

20 Additional Contact Information for Person(s) Registering Judgment

21 (Optional):

22 Telephone Number:

23 FAX Number:

24 Email Address:

25 Name of Attorney for Person(s) Registering Judgment, if

26 any:

27 Address:

28 Telephone Number:

29 FAX Number:

30 Email Address:

31 Name of Person(s) Against Whom Judgment is Being

1 Registered:

2 Address of Person(s) Against Whom Judgment is Being

3 Registered: (provide the most recent address

4 known)

5 Additional Contact Information for Person(s) Against Whom Judgment
6 is Being Registered (Optional) (provide most recent information known):

7 Telephone Number:

8 FAX Number:

9 Email Address:

10 PART III. CALCULATION OF AMOUNT FOR WHICH ENFORCEMENT IS SOUGHT

11 Identify the currency or currencies in which each amount is stated.

12 The amount of the Canadian judgment or part of the judgment being
13 registered is

14 The amount of interest accrued as of the date of registration on the
15 part of the judgment being registered is

16 The applicable rate of interest is

17 The date when interest began to accrue
18 is

19 The part of the judgment to which the interest applies
20 is

21 The Canadian Court awarded costs and expenses relating to the part
22 of the judgment being registered in the amount of
23 (exclude any amount included in the award of costs and expenses which
24 represents an award of attorney's fees).

25 The person registering the Canadian judgment claims postjudgment
26 costs and expenses in the amount of and postjudgment
27 attorney's fees in the amount of relating to the part
28 of the judgment being registered (include only costs, expenses, and
29 attorney's fees incurred before registration).

30 The Canadian Court awarded attorney's fees relating to the part of
31 the judgment being registered in the amount of

1 The amount of the part of the judgment being registered which has
2 been satisfied as of the date of registration is

3 The total amount for which enforcement of the part of the judgment
4 being registered is sought is

5 PART IV. STATEMENT OF PERSON REGISTERING JUDGMENT

6 I, [Person Registering Judgment or
7 Attorney for Person Registering Judgment] state:

8 1. The Canadian judgment is final, conclusive, and enforceable under
9 the law of the Canadian jurisdiction in which it was rendered.

10 2. The Canadian judgment or part of the judgment being registered is
11 within the scope of the Uniform Registration of Canadian Money Judgments
12 Act.

13 3. If only a part of the Canadian judgment is being registered, the
14 amounts stated in Part III of this form relate to that part.

15 PART V. ITEMS REQUIRED TO BE INCLUDED WITH REGISTRATION

16 Attached are (check to signify required items are included):

17 A copy of the Canadian judgment authenticated in the same
18 manner a copy of a foreign judgment is authenticated in an action under
19 section 6 of this act as an accurate copy by the Canadian court that
20 entered the judgment.

21 If the Canadian judgment is not in English, a certified
22 translation of the judgment into English.

23 A registration fee determined by the Supreme Court.

24 I declare that the information provided on this form is true and
25 correct to the best of my knowledge and belief.

26 Submitted by:

27 Signature of [Person Registering Judgment]

28 [Attorney for Person Registering Judgment]

29 [specify whether signer is the person registering the judgment or
30 that person's attorney]

31 Date of submission:

1 Sec. 17. (a) Subject to subsection (b) of this section, a Canadian
2 judgment registered under section 16 of this act has the same effect
3 provided in section 7 of this act for a judgment a court determines to be
4 entitled to recognition.

5 (b) A Canadian judgment registered under section 16 of this act may
6 not be enforced by sale or other disposition of property, or by seizure
7 of property or garnishment, until thirty-one days after notice under
8 section 18 of this act of registration is served. The court for cause may
9 provide for a shorter or longer time. This subsection does not preclude
10 use of relief available under law of this state other than the Uniform
11 Registration of Canadian Money Judgments Act to prevent dissipation,
12 disposition, or removal of property.

13 Sec. 18. (a) A person that registers a Canadian judgment under
14 section 16 of this act shall cause notice of registration to be served on
15 the person against whom the judgment has been registered.

16 (b) Notice under this section must be served in the same manner that
17 a summons and complaint must be served in an action seeking recognition
18 under section 6 of this act of a foreign-country money judgment.

19 (c) Notice under this section must include:

20 (1) the date of registration and court in which the judgment was
21 registered;

22 (2) the docket number assigned to the registration;

23 (3) the name and address of:

24 (A) the person registering the judgment; and

25 (B) the person's attorney, if any;

26 (4) a copy of the registration, including the documents required
27 under subsection (b) of section 16 of this act; and

28 (5) a statement that:

29 (A) the person against whom the judgment has been registered, not
30 later than thirty days after the date of service of notice, may motion
31 the court to vacate the registration; and

1 (B) the court for cause may provide for a shorter or longer time.

2 (d) Proof of service of notice under this section must be filed with
3 the clerk of the court.

4 Sec. 19. (a) Not later than thirty days after notice under section
5 18 of this act is served, the person against whom the judgment was
6 registered may motion the court to vacate the registration. The court for
7 cause may provide for a shorter or longer time for filing the motion.

8 (b) A motion under this section may assert only:

9 (1) a ground that could be asserted to deny recognition of the
10 judgment under the Uniform Foreign-Country Money Judgments Recognition
11 Act; or

12 (2) a failure to comply with a requirement of the Uniform
13 Registration of Canadian Money Judgments Act for registration of the
14 judgment.

15 (c) A motion filed under this section does not itself stay
16 enforcement of the registered judgment.

17 (d) If the court grants a motion under this section, the
18 registration is vacated, and any act under the registration to enforce
19 the registered judgment is void.

20 (e) If the court grants a motion under this section on a ground
21 under subdivision (b)(1) of this section, the court also shall render a
22 judgment denying recognition of the Canadian judgment. A judgment
23 rendered under this subsection has the same effect as a judgment denying
24 recognition to a judgment on the same ground under the Uniform Foreign-
25 Country Money Judgments Recognition Act.

26 Sec. 20. A person that files a motion under subsection (a) of
27 section 19 of this act to vacate registration of a Canadian judgment may
28 request the court to stay enforcement of the judgment pending
29 determination of the motion. The court shall grant the stay if the person
30 establishes a likelihood of success on the merits with regard to a ground
31 listed in subsection (b) of section 19 of this act for vacating a

1 registration. The court may require the person to provide security in an
2 amount determined by the court as a condition of granting the stay.

3 Sec. 21. (a) The Uniform Registration of Canadian Money Judgments
4 Act supplements the Uniform Foreign-Country Money Judgments Recognition
5 Act and that act, other than section 6 of this act, applies to a
6 registration under the Uniform Registration of Canadian Money Judgments
7 Act.

8 (b) A person may seek recognition of a Canadian judgment described
9 in section 15 of this act either:

10 (1) by registration under the Uniform Registration of Canadian Money
11 Judgments Act; or

12 (2) under section 6 of this act.

13 (c) Subject to subsection (d) of this section, a person may not seek
14 recognition in this state of the same judgment or part of a judgment
15 described in subsection (b) or (c) of section 15 of this act with regard
16 to the same person under both the Uniform Registration of Canadian Money
17 Judgments Act and section 6 of this act.

18 (d) If the court grants a motion to vacate a registration solely on
19 a ground under subdivision (b)(2) of section 19 of this act, the person
20 seeking registration may:

21 (1) if the defect in the registration can be cured, file a new
22 registration under the Uniform Registration of Canadian Money Judgments
23 Act; or

24 (2) seek recognition of the judgment under section 6 of this act.

25 Sec. 22. In applying and construing the Uniform Registration of
26 Canadian Money Judgments Act, consideration must be given to the need to
27 promote uniformity of the law with respect to its subject matter among
28 states that enact it.

29 Sec. 23. The Uniform Registration of Canadian Money Judgments Act
30 applies to the registration of a Canadian judgment entered in a
31 proceeding that is commenced in Canada on or after the effective date of

1 this act.

2 Sec. 24. Sections 24 to 61 of this act shall be known and may be
3 cited as the Uniform Powers of Appointment Act.

4 Sec. 25. In the Uniform Powers of Appointment Act:

5 (1) Appointee means a person to which a powerholder makes an
6 appointment of appointive property.

7 (2) Appointive property means the property or property interest
8 subject to a power of appointment.

9 (3) Blanket exercise clause means a clause in an instrument which
10 exercises a power of appointment and is not a specific exercise clause.
11 The term includes a clause that:

12 (A) expressly uses the words "any power" in exercising any power of
13 appointment the powerholder has;

14 (B) expressly uses the words "any property" in appointing any
15 property over which the powerholder has a power of appointment; or

16 (C) disposes of all property subject to disposition by the
17 powerholder.

18 (4) Donor means a person that creates a power of appointment.

19 (5) Exclusionary power of appointment means a power of appointment
20 exercisable in favor of any one or more of the permissible appointees to
21 the exclusion of the other permissible appointees.

22 (6) General power of appointment means a power of appointment
23 exercisable in favor of the powerholder, the powerholder's estate, a
24 creditor of the powerholder, or a creditor of the powerholder's estate.

25 (7) Gift in default clause means a clause identifying a taker in
26 default of appointment.

27 (8) Impermissible appointee means a person that is not a permissible
28 appointee.

29 (9) Instrument means a record.

30 (10) Nongeneral power of appointment means a power of appointment
31 that is not a general power of appointment.

1 (11) Permissible appointee means a person in whose favor a
2 powerholder may exercise a power of appointment.

3 (12) Person means an individual, estate, trust, business or
4 nonprofit entity, public corporation, government or governmental
5 subdivision, agency, or instrumentality, or other legal entity.

6 (13) Power of appointment means a power that enables a powerholder
7 acting in a nonfiduciary capacity to designate a recipient of an
8 ownership interest in or another power of appointment over the appointive
9 property. The term does not include a power of attorney.

10 (14) Powerholder means a person in which a donor creates a power of
11 appointment.

12 (15) Presently exercisable power of appointment means a power of
13 appointment exercisable by the powerholder at the relevant time. The
14 term:

15 (A) includes a power of appointment not exercisable until the
16 occurrence of a specified event, the satisfaction of an ascertainable
17 standard, or the passage of a specified time only after:

18 (i) the occurrence of the specified event;

19 (ii) the satisfaction of the ascertainable standard; or

20 (iii) the passage of the specified time; and

21 (B) does not include a power exercisable only at the powerholder's
22 death.

23 (16) Record means information that is inscribed on a tangible medium
24 or that is stored in an electronic or other medium and is retrievable in
25 perceivable form.

26 (17) Specific exercise clause means a clause in an instrument which
27 specifically refers to and exercises a particular power of appointment.

28 (18) Taker in default of appointment means a person that takes all
29 or part of the appointive property to the extent the powerholder does not
30 effectively exercise the power of appointment.

31 (19) Terms of the instrument means the manifestation of the intent

1 of the maker of the instrument regarding the instrument's provisions as
2 expressed in the instrument or as may be established by other evidence
3 that would be admissible in a legal proceeding.

4 Sec. 26. Unless the terms of the instrument creating a power of
5 appointment manifest a contrary intent:

6 (1) the creation, revocation, or amendment of the power is governed
7 by the law of the donor's domicile at the relevant time; and

8 (2) the exercise, release, renunciation, or disclaimer of the power,
9 or the revocation or amendment of the exercise, release, renunciation, or
10 disclaimer of the power, is governed by the law of the powerholder's
11 domicile at the relevant time.

12 Sec. 27. The common law and principles of equity supplement the
13 Uniform Powers of Appointment Act except to the extent modified by the
14 Uniform Powers of Appointment Act or law of this state other than the
15 Uniform Powers of Appointment Act.

16 Sec. 28. (a) A power of appointment is created only if:

17 (1) the instrument creating the power:

18 (A) is valid under applicable law; and

19 (B) except as otherwise provided in subsection (b) of this section,
20 transfers the appointive property; and

21 (2) the terms of the instrument creating the power manifest the
22 donor's intent to create in a powerholder a power of appointment over the
23 appointive property exercisable in favor of a permissible appointee.

24 (b) Subdivision (a)(1)(B) of this section does not apply to the
25 creation of a power of appointment by the exercise of a power of
26 appointment.

27 (c) A power of appointment may not be created in a deceased
28 individual.

29 (d) Subject to an applicable rule against perpetuities, a power of
30 appointment may be created in an unborn or unascertained powerholder.

31 Sec. 29. A powerholder may not transfer a power of appointment. If

1 a powerholder dies without exercising or releasing a power, the power
2 lapses.

3 Sec. 30. Subject to section 32 of this act, and unless the terms of
4 the instrument creating a power of appointment manifest a contrary
5 intent, the power is:

6 (1) presently exercisable;

7 (2) exclusionary; and

8 (3) except as otherwise provided in section 32 of this act, general.

9 Sec. 31. Unless the terms of the instrument creating a power of
10 appointment manifest a contrary intent, the power is nongeneral if:

11 (1) the power is exercisable only at the powerholder's death; and

12 (2) the permissible appointees of the power are a defined and
13 limited class that does not include the powerholder's estate, the
14 powerholder's creditors, or the creditors of the powerholder's estate.

15 Sec. 32. (a) In this section, adverse party means a person with a
16 substantial beneficial interest in property which would be affected
17 adversely by a powerholder's exercise or nonexercise of a power of
18 appointment in favor of the powerholder, the powerholder's estate, a
19 creditor of the powerholder, or a creditor of the powerholder's estate.

20 (b) If a powerholder may exercise a power of appointment only with
21 the consent or joinder of an adverse party, the power is nongeneral.

22 (c) If the permissible appointees of a power of appointment are not
23 defined and limited, the power is exclusionary.

24 Sec. 33. A donor may revoke or amend a power of appointment only to
25 the extent that:

26 (1) the instrument creating the power is revocable by the donor; or

27 (2) the donor reserves a power of revocation or amendment in the
28 instrument creating the power of appointment.

29 Sec. 34. A power of appointment is exercised only:

30 (1) if the instrument exercising the power is valid under applicable
31 law;

1 (2) if the terms of the instrument exercising the power:
2 (A) manifest the powerholder's intent to exercise the power; and
3 (B) subject to section 37 of this act, satisfy the requirements of
4 exercise, if any, imposed by the donor; and
5 (3) to the extent the appointment is a permissible exercise of the
6 power.

7 Sec. 35. (a) In this section:

8 (1) Residuary clause does not include a residuary clause containing
9 a blanket exercise clause or a specific exercise clause.

10 (2) Will includes a codicil and a testamentary instrument that
11 revises another will.

12 (b) A residuary clause in a powerholder's will, or a comparable
13 clause in the powerholder's revocable trust, manifests the powerholder's
14 intent to exercise a power of appointment only if:

15 (1) the terms of the instrument containing the residuary clause do
16 not manifest a contrary intent;

17 (2) the power is a general power exercisable in favor of the
18 powerholder's estate;

19 (3) there is no gift in default clause or the clause is ineffective;
20 and

21 (4) the powerholder did not release the power.

22 Sec. 36. Unless the terms of the instrument exercising a power of
23 appointment manifest a contrary intent:

24 (1) except as otherwise provided in subdivision (2) of this section,
25 a blanket exercise clause extends to a power acquired by the powerholder
26 after executing the instrument containing the clause; and

27 (2) if the powerholder is also the donor of the power, the clause
28 does not extend to the power unless there is no gift in default clause or
29 the gift in default clause is ineffective.

30 Sec. 37. A powerholder's substantial compliance with a formal
31 requirement of appointment imposed by the donor, including a requirement

1 that the instrument exercising the power of appointment make reference or
2 specific reference to the power, is sufficient if:

3 (1) the powerholder knows of and intends to exercise the power; and

4 (2) the powerholder's manner of attempted exercise of the power does
5 not impair a material purpose of the donor in imposing the requirement.

6 Sec. 38. (a) A powerholder of a general power of appointment that
7 permits appointment to the powerholder or the powerholder's estate may
8 make any appointment, including an appointment in trust or creating a new
9 power of appointment, that the powerholder could make in disposing of the
10 powerholder's own property.

11 (b) A powerholder of a general power of appointment that permits
12 appointment only to the creditors of the powerholder or of the
13 powerholder's estate may appoint only to those creditors.

14 (c) Unless the terms of the instrument creating a power of
15 appointment manifest a contrary intent, the powerholder of a nongeneral
16 power may:

17 (1) make an appointment in any form, including an appointment in
18 trust, in favor of a permissible appointee;

19 (2) create a general power in a permissible appointee;

20 (3) create a nongeneral power in any person to appoint to one or
21 more of the permissible appointees of the original nongeneral power; or

22 (4) create a nongeneral power in a permissible appointee to appoint
23 to one or more persons if the permissible appointees of the new
24 nongeneral power include the permissible appointees of the original
25 nongeneral power.

26 Sec. 39. (a) Subject to section 30-2343, an appointment to a
27 deceased appointee is ineffective.

28 (b) Unless the terms of the instrument creating a power of
29 appointment manifest a contrary intent, a powerholder of a nongeneral
30 power may exercise the power in favor of, or create a new power of
31 appointment in, a descendant of a deceased permissible appointee whether

1 or not the descendant is described by the donor as a permissible
2 appointee.

3 Sec. 40. (a) Except as otherwise provided in section 39 of this
4 act, an exercise of a power of appointment in favor of an impermissible
5 appointee is ineffective.

6 (b) An exercise of a power of appointment in favor of a permissible
7 appointee is ineffective to the extent the appointment is a fraud on the
8 power.

9 Sec. 41. If a powerholder exercises a power of appointment in a
10 disposition that also disposes of property the powerholder owns, the
11 owned property and the appointive property must be allocated in the
12 permissible manner that best carries out the powerholder's intent.

13 Sec. 42. To the extent a powerholder of a general power of
14 appointment, other than a power to withdraw property from, revoke, or
15 amend a trust, makes an ineffective appointment:

16 (1) the gift in default clause controls the disposition of the
17 ineffectively appointed property; or

18 (2) if there is no gift in default clause or to the extent the
19 clause is ineffective, the ineffectively appointed property:

20 (A) passes to:

21 (i) the powerholder if the powerholder is a permissible appointee
22 and living; or

23 (ii) if the powerholder is an impermissible appointee or deceased,
24 the powerholder's estate if the estate is a permissible appointee; or

25 (B) if there is no taker under subdivision (A) of this subdivision,
26 passes under a reversionary interest to the donor or the donor's
27 transferee or successor in interest.

28 Sec. 43. To the extent a powerholder releases or fails to exercise
29 a general power of appointment other than a power to withdraw property
30 from, revoke, or amend a trust:

31 (1) the gift in default clause controls the disposition of the

1 unappointed property; or

2 (2) if there is no gift in default clause or to the extent the
3 clause is ineffective:

4 (A) except as otherwise provided in subdivision (B) of this
5 subdivision, the unappointed property passes to:

6 (i) the powerholder if the powerholder is a permissible appointee
7 and living; or

8 (ii) if the powerholder is an impermissible appointee or deceased,
9 the powerholder's estate if the estate is a permissible appointee; or

10 (B) to the extent the powerholder released the power, or if there is
11 no taker under subdivision (A) of this subdivision, the unappointed
12 property passes under a reversionary interest to the donor or the donor's
13 transferee or successor in interest.

14 Sec. 44. To the extent a powerholder releases, ineffectively
15 exercises, or fails to exercise a nongeneral power of appointment:

16 (1) the gift in default clause controls the disposition of the
17 unappointed property; or

18 (2) if there is no gift in default clause or to the extent the
19 clause is ineffective, the unappointed property:

20 (A) passes to the permissible appointees if:

21 (i) the permissible appointees are defined and limited; and

22 (ii) the terms of the instrument creating the power do not manifest
23 a contrary intent; or

24 (B) if there is no taker under subdivision (A) of this subdivision,
25 passes under a reversionary interest to the donor or the donor's
26 transferee or successor in interest.

27 Sec. 45. Unless the terms of the instrument creating or exercising
28 a power of appointment manifest a contrary intent, if the powerholder
29 makes a valid partial appointment to a taker in default of appointment,
30 the taker in default of appointment may share fully in unappointed
31 property.

1 Sec. 46. If a powerholder makes an appointment to a taker in
2 default of appointment and the appointee would have taken the property
3 under a gift in default clause had the property not been appointed, the
4 power of appointment is deemed not to have been exercised and the
5 appointee takes under the clause.

6 Sec. 47. A powerholder may revoke or amend an exercise of a power
7 of appointment only to the extent that:

8 (1) the powerholder reserves a power of revocation or amendment in
9 the instrument exercising the power of appointment and, if the power is
10 nongeneral, the terms of the instrument creating the power of appointment
11 do not prohibit the reservation; or

12 (2) the terms of the instrument creating the power of appointment
13 provide that the exercise is revocable or amendable.

14 Sec. 48. As provided by section 30-2352:

15 (1) A powerholder may renounce all or part of a power of
16 appointment.

17 (2) A permissible appointee, appointee, or taker in default of
18 appointment may renounce all or part of an interest in appointive
19 property.

20 Sec. 49. A powerholder may release a power of appointment, in whole
21 or in part, except to the extent the terms of the instrument creating the
22 power prevent the release.

23 Sec. 50. A powerholder of a releasable power of appointment may
24 release the power in whole or in part:

25 (1) by substantial compliance with a method provided in the terms of
26 the instrument creating the power; or

27 (2) if the terms of the instrument creating the power do not provide
28 a method or the method provided in the terms of the instrument is not
29 expressly made exclusive, by a record manifesting the powerholder's
30 intent by clear and convincing evidence.

31 Sec. 51. A powerholder may revoke or amend a release of a power of

1 appointment only to the extent that:

2 (1) the instrument of release is revocable by the powerholder; or

3 (2) the powerholder reserves a power of revocation or amendment in
4 the instrument of release.

5 Sec. 52. A powerholder of a presently exercisable power of
6 appointment may contract:

7 (1) not to exercise the power; or

8 (2) to exercise the power if the contract when made does not confer
9 a benefit on an impermissible appointee.

10 Sec. 53. A powerholder of a power of appointment that is not
11 presently exercisable may contract to exercise or not to exercise the
12 power only if the powerholder:

13 (1) is also the donor of the power; and

14 (2) has reserved the power in a revocable trust.

15 Sec. 54. The remedy for a powerholder's breach of a contract to
16 appoint or not to appoint appointive property is limited to damages
17 payable out of the appointive property or, if appropriate, specific
18 performance of the contract.

19 Sec. 55. (a) In this section, power of appointment created by the
20 powerholder includes a power of appointment created in a transfer by
21 another person to the extent the powerholder contributed value to the
22 transfer.

23 (b) Appointive property subject to a general power of appointment
24 created by the powerholder is subject to a claim of a creditor of the
25 powerholder or of the powerholder's estate to the extent provided in the
26 Uniform Voidable Transactions Act.

27 (c) Subject to subsection (b) of this section, appointive property
28 subject to a general power of appointment created by the powerholder is
29 not subject to a claim of a creditor of the powerholder or the
30 powerholder's estate to the extent the powerholder irrevocably appointed
31 the property in favor of a person other than the powerholder or the

1 powerholder's estate.

2 (d) Subject to subsections (b) and (c) of this section, and
3 notwithstanding the presence of a spendthrift provision or whether the
4 claim arose before or after the creation of the power of appointment,
5 appointive property subject to a general power of appointment created by
6 the powerholder is subject to a claim of a creditor of:

7 (1) the powerholder, to the same extent as if the powerholder owned
8 the appointive property, if the power is presently exercisable; and

9 (2) the powerholder's estate, to the extent the estate is
10 insufficient to satisfy the claim and subject to the right of a decedent
11 to direct the source from which liabilities are paid, if the power is
12 exercisable at the powerholder's death.

13 Sec. 56. (a) Except as otherwise provided in subsection (b) of this
14 section, appointive property subject to a general power of appointment
15 created by a person other than the powerholder is subject to a claim of a
16 creditor of:

17 (1) the powerholder, to the extent the powerholder's property is
18 insufficient, if the power is presently exercisable; and

19 (2) the powerholder's estate, to the extent the estate is
20 insufficient, subject to the right of a decedent to direct the source
21 from which liabilities are paid.

22 (b) Subject to subsection (c) of section 58 of this act, a power of
23 appointment created by a person other than the powerholder which is
24 subject to an ascertainable standard relating to an individual's health,
25 education, support, or maintenance within the meaning of 26 U.S.C.
26 2041(b)(1)(A) or 26 U.S.C. 2514(c)(1), as such sections existed on
27 January 1, 2021, is treated for purposes of the Uniform Powers of
28 Appointment Act as a nongeneral power.

29 Sec. 57. (a) For purposes of the Uniform Powers of Appointment Act,
30 and except as otherwise provided in subsection (b) of this section, a
31 power to withdraw property from a trust is treated, during the time the

1 power may be exercised, as a presently exercisable general power of
2 appointment to the extent of the property subject to the power to
3 withdraw.

4 (b) On the lapse, release, or waiver of a power to withdraw property
5 from a trust, the power is treated as a presently exercisable general
6 power of appointment only to the extent the value of the property
7 affected by the lapse, release, or waiver exceeds the greater of the
8 amount specified in 26 U.S.C. 2041(b)(2) and 26 U.S.C. 2514(e) or the
9 amount specified in 26 U.S.C. 2503(b), as such sections existed on
10 January 1, 2021.

11 Sec. 58. (a) Except as otherwise provided in subsections (b) and
12 (c) of this section, appointive property subject to a nongeneral power of
13 appointment is exempt from a claim of a creditor of the powerholder or
14 the powerholder's estate.

15 (b) Appointive property subject to a nongeneral power of appointment
16 is subject to a claim of a creditor of the powerholder or the
17 powerholder's estate to the extent that the powerholder owned the
18 property and, reserving the nongeneral power, transferred the property in
19 violation of the Uniform Voidable Transactions Act.

20 (c) If the initial gift in default of appointment is to the
21 powerholder or the powerholder's estate, a nongeneral power of
22 appointment is treated for purposes of the Uniform Powers of Appointment
23 Act as a general power.

24 Sec. 59. In applying and construing the Uniform Powers of
25 Appointment Act, consideration must be given to the need to promote
26 uniformity of the law with respect to its subject matter among states
27 that enact it.

28 Sec. 60. The Uniform Powers of Appointment Act modifies, limits, or
29 supersedes the Electronic Signatures in Global and National Commerce Act,
30 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section
31 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery

1 of any of the notices described in section 103(b) of that act, 15 U.S.C.
2 7003(b).

3 Sec. 61. (a) Except as otherwise provided in the Uniform Powers of
4 Appointment Act, on and after the effective date of this act:

5 (1) the Uniform Powers of Appointment Act applies to a power of
6 appointment created before, on, or after the effective date of this act;

7 (2) the Uniform Powers of Appointment Act applies to a judicial
8 proceeding concerning a power of appointment commenced on or after the
9 effective date of this act;

10 (3) the Uniform Powers of Appointment Act applies to a judicial
11 proceeding concerning a power of appointment commenced before the
12 effective date of this act unless the court finds that application of a
13 particular provision of the Uniform Powers of Appointment Act would
14 interfere substantially with the effective conduct of the judicial
15 proceeding or prejudice a right of a party, in which case the particular
16 provision of the Uniform Powers of Appointment Act does not apply and the
17 superseded law applies;

18 (4) a rule of construction or presumption provided in the Uniform
19 Powers of Appointment Act applies to an instrument executed before the
20 effective date of this act unless there is a clear indication of a
21 contrary intent in the terms of the instrument; and

22 (5) except as otherwise provided in subdivisions (1) through (4) of
23 this subsection, an action done before the effective date of this act is
24 not affected by the Uniform Powers of Appointment Act.

25 (b) If a right is acquired, extinguished, or barred on the
26 expiration of a prescribed period that commenced under law of this state
27 other than the Uniform Powers of Appointment Act before the effective
28 date of this act, the law continues to apply to the right.

29 Sec. 62. Section 30-24,129, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 30-24,129 (a) Thirty days after the death of a decedent, any person

1 claiming as successor to the decedent's interest in real property in this
2 state may file or cause to be filed on his or her behalf, with the
3 register of deeds office of a county in which the real property of the
4 decedent that is the subject of the affidavit is located, an affidavit
5 describing the real property owned by the decedent and the interest of
6 the decedent in the property. The affidavit shall be signed by all
7 persons claiming as successors or by parties legally acting on their
8 behalf and shall be prima facie evidence of the facts stated in the
9 affidavit. The affidavit shall state:

10 (1) the value of the decedent's interest in all real property in the
11 decedent's estate located in this state does not exceed fifty thousand
12 dollars. The value of the decedent's interest shall be determined from
13 the value of the property as shown on the assessment rolls for the year
14 in which the decedent died less real estate taxes and interest thereon if
15 any is due at the time of death;

16 (2) thirty days have elapsed since the death of the decedent as
17 shown in a certified or authenticated copy of the decedent's death
18 certificate attached to the affidavit;

19 (3) no application or petition for the appointment of a personal
20 representative is pending or has been granted in the State of Nebraska
21 ~~any jurisdiction~~;

22 (4) the claiming successor is entitled to the real property either
23 by reason of the homestead allowance, exempt property allowance, or
24 family allowance, by intestate succession, or by devise under the will of
25 the decedent. If claiming by devise under the will of the decedent, a
26 copy of such will shall be attached to the affidavit;

27 (5) the claiming successor has made an investigation and has been
28 unable to determine any subsequent will;

29 (6) no other person has a right to the interest of the decedent in
30 the described property;

31 (7) the claiming successor's relationship to the decedent and the

1 value of the entire estate of the decedent subject to probate; and

2 (8) the person or persons claiming as successors under the affidavit
3 swear or affirm that all statements in the affidavit are true and
4 material and further acknowledge that any false statement may subject the
5 person or persons to penalties relating to perjury under section 28-915.

6 (b) The recorded affidavit and certified or authenticated copy of
7 the decedent's death certificate shall also be recorded by the claiming
8 successor in any other county in this state in which the real property of
9 the decedent that is the subject of the affidavit is located.

10 Sec. 63. Section 68-919, Revised Statutes Cumulative Supplement,
11 2020, is amended to read:

12 68-919 (1) The recipient of medical assistance under the medical
13 assistance program shall be indebted to the department for the total
14 amount paid for medical assistance on behalf of the recipient if:

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

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

24 (2) The debt accruing under subsection (1) of this section arises
25 during the life of the recipient but shall be held in abeyance until the
26 death of the recipient. Any such debt to the department that exists when
27 the recipient dies shall be recovered only after the death of the
28 recipient's spouse, if any, and only after the recipient is not survived
29 by a child who either is under twenty-one years of age or is blind or
30 totally and permanently disabled as defined by the Supplemental Security
31 Income criteria. In recovering such debt, the department shall not

1 foreclose on a lien on the home of the recipient (a) if a sibling of the
2 recipient with an equity interest in the home has lawfully resided in the
3 home for at least one year before the recipient's admission and has lived
4 there continuously since the date of the recipient's admission or (b)
5 while the home is the residence of an adult child who has lived in the
6 recipient's home for at least two years immediately before the recipient
7 was institutionalized, has lived there continuously since that time, and
8 can establish to the satisfaction of the department that he or she
9 provided care that delayed the recipient's admission.

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

14 (4)(a) It is the intent of the Legislature that the debt specified
15 in subsection (1) of this section be collected by the department before
16 any portion of the estate of a recipient of medical assistance is enjoyed
17 by or transferred to a person not specified in subsection (2) of this
18 section as a result of the death of such recipient. The debt may be
19 recovered from the estate of a recipient of medical assistance. The
20 department shall undertake all reasonable and cost-effective measures to
21 enforce recovery under the Medical Assistance Act. All persons specified
22 in subsections (2) and (4) of this section shall cooperate with the
23 department in the enforcement of recovery under the act.

24 (b) For purposes of this section:

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

31 (A) Assets to be transferred to a beneficiary described in section

1 77-2004 or 77-2005 in relation to the recipient through a revocable trust
2 or other similar arrangement which has become irrevocable by reason of
3 the recipient's death; and

4 (B) Notwithstanding anything to the contrary in subdivision (3) or
5 (4) of section 68-923, assets conveyed or otherwise transferred to a
6 survivor, an heir, an assignee, a beneficiary, or a devisee of the
7 recipient of medical assistance through joint tenancy, tenancy in common,
8 transfer on death deed, survivorship, conveyance of a remainder interest,
9 retention of a life estate or of an estate for a period of time, living
10 trust, or other arrangement by which value or possession is transferred
11 to or realized by the beneficiary of the conveyance or transfer at or as
12 a result of the recipient's death. Such other arrangements include
13 insurance policies or annuities in which the recipient of medical
14 assistance had at the time of death any incidents of ownership of the
15 policy or annuity or the power to designate beneficiaries and any pension
16 rights or completed retirement plans or accounts of the recipient. A
17 completed retirement plan or account is one which because of the death of
18 the recipient of medical assistance ceases to have elements of retirement
19 relating to such recipient and under which one or more beneficiaries
20 exist after such recipient's death; and

21 (ii) Notwithstanding anything to the contrary in subdivision (4)(b)
22 of this section, estate Estate of a recipient of medical assistance does
23 not include:

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

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

31 (C) Life estate interests in real estate after sixty months from the

1 date of recording a deed with retention of a life estate by the recipient
2 of medical assistance; and

3 (D) ~~(C)~~ Any pension rights or completed retirement plans to the
4 extent that such rights or plans are exempt from claims for reimbursement
5 of medical assistance under federal law.

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

27 (c) ~~(d)~~ The department, upon application of the personal
28 representative of an estate, any person or entity otherwise authorized
29 under the Nebraska Probate Code to act on behalf of a decedent, any
30 person or entity having an interest in assets of the decedent which are
31 subject to this subsection, a successor trustee of a revocable trust or

1 other similar arrangement which has become irrevocable by reason of the
2 decedent's death, or any other person or entity holding assets of the
3 decedent described in this subsection, shall timely certify to the
4 applicant, that as of a designated date, whether medical assistance
5 reimbursement is due or an application for medical assistance was pending
6 that may result in medical assistance reimbursement due. An application
7 for a certificate under this subdivision shall be provided to the
8 department in a delivery manner and at an address designated by the
9 department, which manner may include email. The department shall post the
10 acceptable manner of delivery on its web site. Any application that fails
11 to conform with such manner is void. Notwithstanding the lack of an order
12 by a court designating the applicant as a person or entity who may
13 receive information protected by applicable privacy laws, the applicant
14 shall have the authority of a personal representative for the limited
15 purpose of seeking and obtaining from the department this certification.
16 If, in response to a certification request, the department certifies that
17 reimbursement for medical assistance is due, the department may release
18 some or all of the property of a decedent from the provisions of this
19 subsection.

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

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

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

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

11 (7)(a) Whenever the department has provided medical assistance
12 because of sickness or injury to any person resulting from a third
13 party's wrongful act or negligence and the person has recovered damages
14 from such third party, the department shall have the right to recover the
15 medical assistance it paid from any amounts that the person has received
16 as follows:

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

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

27 (b) When an action or claim is brought by the person and the person
28 incurs or will incur a personal liability to pay attorney's fees and
29 costs of litigation or costs incurred in pursuit of a claim, the
30 department's claim for reimbursement of the medical assistance provided
31 to the person shall be reduced by an amount that represents the

1 department's reasonable pro rata share of attorney's fees and costs of
2 litigation or the costs incurred in pursuit of a claim.

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

5 (9) The changes made to this section by Laws 2019, LB593, shall
6 apply retroactively to August 30, 2015.

7 Sec. 64. Sections 64 to 77 of this act shall be known and may be
8 cited as the Uniform Easement Relocation Act.

9 Sec. 65. In the Uniform Easement Relocation Act:

10 (1) Appurtenant easement means an easement tied to or dependent on
11 ownership or occupancy of a unit or a parcel of real property.

12 (2) Conservation easement means a nonpossessory property interest
13 created for one or more of the following conservation purposes:

14 (A) retaining or protecting the natural, scenic, wildlife, wildlife-
15 habitat, biological, ecological, or open-space values of real property;

16 (B) ensuring the availability of real property for agricultural,
17 forest, outdoor-recreational, or open-space uses;

18 (C) protecting natural resources, including wetlands, grasslands,
19 and riparian areas;

20 (D) maintaining or enhancing air or water quality;

21 (E) preserving the historical, architectural, archeological,
22 paleontological, or cultural aspects of real property; or

23 (F) any other purpose under the Conservation and Preservation
24 Easements Act.

25 (3) Dominant estate means an estate or interest in real property
26 benefited by an appurtenant easement.

27 (4) Easement means a nonpossessory property interest that:

28 (A) provides a right to enter, use, or enjoy real property owned by
29 or in the possession of another; and

30 (B) imposes on the owner or possessor a duty not to interfere with
31 the entry, use, or enjoyment permitted by the instrument creating the

1 easement or, in the case of an easement not established by express grant
2 or reservation, the entry, use, or enjoyment authorized by law.

3 (5) Easement holder means:

4 (A) in the case of an appurtenant easement, the dominant estate
5 owner; or

6 (B) in the case of an easement in gross, public utility easement,
7 conservation easement, or negative easement, the grantee of the easement
8 or a successor.

9 (6) Easement in gross means an easement not tied to or dependent on
10 ownership or occupancy of a unit or a parcel of real property.

11 (7) Lessee of record means a person holding a lessee's interest
12 under a recorded lease or memorandum of lease.

13 (8) Negative easement means a nonpossessory property interest whose
14 primary purpose is to impose on a servient estate owner a duty not to
15 engage in a specified use of the estate.

16 (9) Person means an individual, estate, business or nonprofit
17 entity, public corporation, government or governmental subdivision,
18 agency, or instrumentality, or other legal entity.

19 (10) Public utility easement means a nonpossessory property interest
20 in which the easement holder is a publicly regulated or publicly owned
21 utility under federal law or law of this state or a municipality. The
22 term includes an easement benefiting an intrastate utility, an interstate
23 utility, or a utility cooperative.

24 (11) Real property means an estate or interest in, over, or under
25 land, including structures, fixtures, and other things that by custom,
26 usage, or law pass with a conveyance of land whether or not described or
27 mentioned in the contract of sale or instrument of conveyance. The term
28 includes the interest of a lessor and lessee and, unless the interest is
29 personal property under law of this state other than the Uniform Easement
30 Relocation Act, an interest in a common interest community.

31 (12) Record, used as a noun, means information that is inscribed on

1 a tangible medium or that is stored in an electronic or other medium and
2 is retrievable in perceivable form.

3 (13) Security instrument means a mortgage, deed of trust, security
4 deed, contract for deed, lease, or other record that creates or provides
5 for an interest in real property to secure payment or performance of an
6 obligation, whether by acquisition or retention of a lien, a lessor's
7 interest under a lease, or title to the real property. The term includes:

8 (A) a security instrument that also creates or provides for a
9 security interest in personal property;

10 (B) a modification or amendment of a security instrument; and

11 (C) a record creating a lien on real property to secure an
12 obligation under a covenant running with the real property or owed by a
13 unit owner to a common interest community association.

14 (14) Security interest holder of record means a person holding an
15 interest in real property created by a recorded security instrument.

16 (15) Servient estate means an estate or interest in real property
17 that is burdened by an easement.

18 (16) Title evidence means a title insurance policy, preliminary
19 title report or binder, title insurance commitment, abstract of title,
20 attorney's opinion of title based on examination of public records or an
21 abstract of title, or any other means of reporting the state of title to
22 real property which is customary in the locality.

23 (17) Unit means a physical portion of a common interest community
24 designated for separate ownership or occupancy with boundaries described
25 in a declaration establishing the common interest community.

26 (18) Utility cooperative means a nonprofit entity whose purpose is
27 to deliver a utility service, such as electricity, oil, natural gas,
28 water, sanitary sewer, storm water, or telecommunications, to its
29 customers or members and includes an electric cooperative, rural electric
30 cooperative, rural water district, and rural water association.

31 Sec. 66. (a) Except as otherwise provided in subsection (b) of this

1 section, the Uniform Easement Relocation Act applies to an easement
2 established by express grant or reservation or by prescription,
3 implication, necessity, estoppel, or other method.

4 (b) The Uniform Easement Relocation Act may not be used to relocate:

5 (1) a public utility easement, conservation easement, or negative
6 easement;

7 (2) an easement or right-of-way held by a public power and
8 irrigation district, irrigation district, reclamation district, or canal
9 company; or

10 (3) an easement if the proposed location would encroach on an area
11 of an estate burdened by a conservation easement or would interfere with
12 the use or enjoyment of a public utility easement or an easement
13 appurtenant to a conservation easement.

14 (c) The Uniform Easement Relocation Act does not apply to relocation
15 of an easement by consent.

16 Sec. 67. A servient estate owner may relocate an easement under the
17 Uniform Easement Relocation Act only if the relocation does not
18 materially:

19 (1) lessen the utility of the easement;

20 (2) after the relocation, increase the burden on the easement holder
21 in its reasonable use and enjoyment of the easement;

22 (3) impair an affirmative, easement-related purpose for which the
23 easement was created;

24 (4) during or after the relocation, impair the safety of the
25 easement holder or another entitled to use and enjoy the easement;

26 (5) during the relocation, disrupt the use and enjoyment of the
27 easement by the easement holder or another entitled to use and enjoy the
28 easement, unless the servient estate owner substantially mitigates the
29 duration and nature of the disruption;

30 (6) impair the physical condition, use, or value of the dominant
31 estate or improvements on the dominant estate; or

1 (7) impair the value of the collateral of a security interest holder
2 of record in the servient estate or dominant estate, impair a real
3 property interest of a lessee of record in the dominant estate, or impair
4 a recorded real property interest of any other person in the servient
5 estate or dominant estate.

6 Sec. 68. (a) To obtain an order to relocate an easement under the
7 Uniform Easement Relocation Act, a servient estate owner must commence a
8 civil action.

9 (b) A servient estate owner that commences a civil action under
10 subsection (a) of this section:

11 (1) shall serve a summons and complaint on:

12 (A) the easement holder whose easement is the subject of the
13 relocation;

14 (B) a security interest holder of record of an interest in the
15 servient estate or dominant estate;

16 (C) a lessee of record of an interest in the dominant estate; and

17 (D) except as otherwise provided in subdivision (2) of this
18 subsection, any other owner of a recorded real property interest if the
19 relocation would encroach on an area of the servient estate or dominant
20 estate burdened by the interest; and

21 (2) is not required to serve a summons and complaint on the owner of
22 a recorded real property interest in oil, gas, or minerals unless the
23 interest includes an easement to facilitate oil, gas, or mineral
24 development.

25 (c) A complaint under this section must state:

26 (1) the intent of the servient estate owner to seek the relocation;

27 (2) the nature, extent, and anticipated dates of commencement and
28 completion of the proposed relocation;

29 (3) the current and proposed locations of the easement;

30 (4) the reason the easement is eligible for relocation under section
31 66 of this act;

1 (5) the reason the proposed relocation satisfies the conditions for
2 relocation under section 67 of this act; and

3 (6) that the servient estate owner has made a reasonable attempt to
4 notify the holders of any public utility easement, conservation easement,
5 or negative easement on the servient estate or dominant estate of the
6 proposed relocation.

7 (d) At any time before the court renders a final order in an action
8 under subsection (a) of this section, a person served under subdivision
9 (b)(1)(B), (C), or (D) of this section may file a document, in recordable
10 form, that waives its rights to contest or obtain relief in connection
11 with the relocation or subordinates its interests to the relocation. On
12 filing of the document, the court may order that the person is not
13 required to answer or participate further in the action.

14 Sec. 69. (a) The court may not approve relocation of an easement
15 under the Uniform Easement Relocation Act unless the servient estate
16 owner:

17 (1) establishes that the easement is eligible for relocation under
18 section 66 of this act; and

19 (2) satisfies the conditions for relocation under section 67 of this
20 act.

21 (b) An order under the Uniform Easement Relocation Act approving
22 relocation of an easement must:

23 (1) state that the order is issued in accordance with the Uniform
24 Easement Relocation Act;

25 (2) recite the recording data of the instrument creating the
26 easement, if any, any amendments, and any notice as described under
27 sections 76-288 to 76-298;

28 (3) identify the immediately preceding location of the easement;

29 (4) describe in a legally sufficient manner the new location of the
30 easement;

31 (5) describe mitigation required of the servient estate owner during

1 relocation;

2 (6) refer in detail to the plans and specifications of improvements
3 necessary for the easement holder to enter, use, and enjoy the easement
4 in the new location;

5 (7) specify conditions to be satisfied by the servient estate owner
6 to relocate the easement and construct improvements necessary for the
7 easement holder to enter, use, and enjoy the easement in the new
8 location;

9 (8) include a provision for payment by the servient estate owner of
10 expenses under section 70 of this act;

11 (9) include a provision for compliance by the parties with the
12 obligation of good faith under section 71 of this act; and

13 (10) instruct the servient estate owner to record an affidavit, if
14 required under subsection (a) of section 72 of this act, when the
15 servient estate owner substantially completes relocation.

16 (c) An order under subsection (b) of this section may include any
17 other provision consistent with the Uniform Easement Relocation Act for
18 the fair and equitable relocation of the easement.

19 (d) Before a servient estate owner proceeds with relocation of an
20 easement under the Uniform Easement Relocation Act, the owner must
21 record, in the land records of each jurisdiction where the servient
22 estate is located, a certified copy of the order under subsection (b) of
23 this section.

24 Sec. 70. A servient estate owner is responsible for reasonable
25 expenses of relocation of an easement under the Uniform Easement
26 Relocation Act, including the expense of:

27 (1) constructing improvements on the servient estate or dominant
28 estate in accordance with an order under section 69 of this act;

29 (2) during the relocation, mitigating disruption in the use and
30 enjoyment of the easement by the easement holder or another person
31 entitled to use and enjoy the easement;

1 (3) obtaining a governmental approval or permit to relocate the
2 easement and construct necessary improvements;

3 (4) preparing and recording the certified copy required by
4 subsection (d) of section 69 of this act and any other document required
5 to be recorded;

6 (5) any title work required to complete the relocation or required
7 by a party to the civil action as a result of the relocation;

8 (6) applicable premiums for title insurance related to the
9 relocation;

10 (7) any expert necessary to review plans and specifications for an
11 improvement to be constructed in the relocated easement or on the
12 dominant estate and to confirm compliance with the plans and
13 specifications referred to in the order under subdivision (b)(6) of
14 section 69 of this act;

15 (8) payment of any maintenance cost associated with the relocated
16 easement which is greater than the maintenance cost associated with the
17 easement before relocation; and

18 (9) obtaining any third-party consent required to relocate the
19 easement.

20 Sec. 71. After the court, under section 69 of this act, approves
21 relocation of an easement and the servient estate owner commences the
22 relocation, the servient estate owner, the easement holder, and other
23 parties in the civil action shall act in good faith to facilitate the
24 relocation in compliance with the Uniform Easement Relocation Act.

25 Sec. 72. (a) If an order under section 69 of this act requires the
26 construction of an improvement as a condition for relocation of an
27 easement, relocation is substantially complete, and the easement holder
28 is able to enter, use, and enjoy the easement in the new location, the
29 servient estate owner shall:

30 (1) record, in the land records of each jurisdiction where the
31 servient estate is located, an affidavit certifying that the easement has

1 been relocated; and

2 (2) send, by certified mail, a copy of the recorded affidavit to the
3 easement holder and parties to the civil action.

4 (b) Until an affidavit under subsection (a) of this section is
5 recorded and sent, the easement holder may enter, use, and enjoy the
6 easement in the current location, subject to the court's order under
7 section 69 of this act approving relocation.

8 (c) If an order under section 69 of this act does not require an
9 improvement to be constructed as a condition of the relocation, recording
10 the order under subsection (d) of section 69 of this act constitutes
11 relocation.

12 Sec. 73. (a) Relocation of an easement under the Uniform Easement
13 Relocation Act:

14 (1) is not a new transfer or a new grant of an interest in the
15 servient estate or the dominant estate;

16 (2) is not a breach or default of, and does not trigger, a due-on-
17 sale clause or other transfer-restriction clause under a security
18 instrument, except as otherwise determined by a court under law other
19 than the Uniform Easement Relocation Act;

20 (3) is not a breach or default of a lease, except as otherwise
21 determined by a court under law other than the Uniform Easement
22 Relocation Act;

23 (4) is not a breach or default by the servient estate owner of a
24 recorded document affected by the relocation, except as otherwise
25 determined by a court under law other than the Uniform Easement
26 Relocation Act;

27 (5) does not affect the priority of the easement with respect to
28 other recorded real property interests burdening the area of the servient
29 estate where the easement was located before the relocation; and

30 (6) is not a fraudulent conveyance or voidable transaction under
31 law.

1 (b) The Uniform Easement Relocation Act does not affect any other
2 method of relocating an easement permitted under law of this state other
3 than the Uniform Easement Relocation Act.

4 Sec. 74. The right of a servient estate owner to relocate an
5 easement under the Uniform Easement Relocation Act may not be waived,
6 excluded, or restricted by agreement even if:

7 (1) the instrument creating the easement prohibits relocation or
8 contains a waiver, exclusion, or restriction of the Uniform Easement
9 Relocation Act;

10 (2) the instrument creating the easement requires consent of the
11 easement holder to amend the terms of the easement; or

12 (3) the location of the easement is fixed by the instrument creating
13 the easement, another agreement, previous conduct, acquiescence,
14 estoppel, or implication.

15 Sec. 75. In applying and construing the Uniform Easement Relocation
16 Act, consideration must be given to the need to promote uniformity of the
17 law with respect to its subject matter among the states that enact it.

18 Sec. 76. The Uniform Easement Relocation Act modifies, limits, or
19 supersedes the Electronic Signatures in Global and National Commerce Act,
20 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section
21 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery
22 of any of the notices described in section 103(b) of that act, 15 U.S.C.
23 7003(b).

24 Sec. 77. The Uniform Easement Relocation Act applies to an easement
25 created before, on, or after the effective date of this act.

26 Sec. 78. If any section in this act or any part of any section is
27 declared invalid or unconstitutional, the declaration shall not affect
28 the validity or constitutionality of the remaining portions.

29 Sec. 79. Original section 30-24,129, Reissue Revised Statutes of
30 Nebraska, and section 68-919, Revised Statutes Cumulative Supplement,
31 2020, are repealed.