

LEGISLATIVE BILL 501

Approved by the Governor May 5, 2021

Introduced by Flood, 19; DeBoer, 10.

A BILL FOR AN ACT relating to legal process; to amend section 30-24,129, Reissue Revised Statutes of Nebraska, and section 68-919, Revised Statutes Cumulative Supplement, 2020; to adopt the Uniform Foreign-Country Money Judgments Recognition Act, the Uniform Registration of Canadian Money Judgments Act, the Uniform Powers of Appointment Act, and the Uniform Easement Relocation Act; to change provisions relating to succession to real property; to redefine estate of a recipient of medical assistance for purposes of claims against a medical assistance recipient; to provide severability; and to repeal the original sections.

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

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

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

(1) Foreign country means a government other than:

(A) the United States;

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

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

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

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

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

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

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

(1) a judgment for taxes;

(2) a fine or other penalty; or

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

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

Sec. 4. (a) Except as otherwise provided in subsections (b) and (c) of this section, a court of this state shall recognize a foreign-country judgment to which the Uniform Foreign-Country Money Judgments Recognition Act applies.

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

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

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

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

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

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

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

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

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

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

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

(7) the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or

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

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

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

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

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

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

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

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

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

(b) The list of bases for personal jurisdiction in subsection (a) of this section is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subsection (a) of this section as sufficient to support a foreign-country judgment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 16. (a) A person seeking recognition of a Canadian judgment described in section 15 of this act to enforce the judgment may register the judgment in the office of the clerk of a court in which an action for

recognition of the judgment could be filed under section 6 of this act.

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

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

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

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

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

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

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

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

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

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

(7) the amount, as of the date of registration, of postjudgment costs, expenses, and attorney's fees claimed by the person registering the judgment or part of the judgment;

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

(9) a statement that:

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

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

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

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

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

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

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

REGISTRATION OF CANADIAN MONEY JUDGMENT

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

PART I. IDENTIFICATION OF CANADIAN JUDGMENT

Canadian Court Rendering the Judgment:

Case/Docket Number in Canadian Court:

Name of Plaintiff(s):

Name of Defendant(s):

The Canadian Court entered the judgment on [Date] in [City] in [Province or Territory]. The judgment includes an award for the payment of money in favor of in the amount of

If only part of the Canadian judgment is subject to registration (see subsections (b) and (c) of section 15 of this act), describe the part of the judgment being registered:

PART II. IDENTIFICATION OF PERSON REGISTERING JUDGMENT AND PERSON AGAINST WHOM JUDGMENT IS BEING REGISTERED

Provide the following information for all persons seeking to register the judgment under this registration and all persons against whom the judgment is being registered under this registration.

Name of Person(s) Registering Judgment:

If a person registering the judgment is not the person in whose favor the judgment was rendered, describe the interest the person registering the judgment has in the judgment which entitles the person to seek its recognition and enforcement:

Address of Person(s) Registering Judgment:

Additional Contact Information for Person(s) Registering Judgment (Optional):

Telephone Number:

FAX Number:

Email Address:

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

Address:

Telephone Number:

FAX Number:

Email Address:

Name of Person(s) Against Whom Judgment is Being Registered:

Address of Person(s) Against Whom Judgment is Being Registered: (provide the most recent address known)

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

Telephone Number:

FAX Number:

Email Address:

PART III. CALCULATION OF AMOUNT FOR WHICH ENFORCEMENT IS SOUGHT

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

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

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

The applicable rate of interest is

The date when interest began to accrue is

The part of the judgment to which the interest applies is

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

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

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

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

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

PART IV. STATEMENT OF PERSON REGISTERING JUDGMENT

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

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

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

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

PART V. ITEMS REQUIRED TO BE INCLUDED WITH REGISTRATION

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

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

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

..... A registration fee determined by the Supreme Court.

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

Submitted by:

Signature of [Person Registering Judgment]

[Attorney for Person Registering Judgment]

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

Date of submission:

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

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

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

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

(c) Notice under this section must include:

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

- (2) the docket number assigned to the registration;
- (3) the name and address of:
 - (A) the person registering the judgment; and
 - (B) the person's attorney, if any;
- (4) a copy of the registration, including the documents required under subsection (b) of section 16 of this act; and
- (5) a statement that:
 - (A) the person against whom the judgment has been registered, not later than thirty days after the date of service of notice, may motion the court to vacate the registration; and
 - (B) the court for cause may provide for a shorter or longer time.
- (d) Proof of service of notice under this section must be filed with the clerk of the court.

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

- (b) A motion under this section may assert only:
 - (1) a ground that could be asserted to deny recognition of the judgment under the Uniform Foreign-Country Money Judgments Recognition Act; or
 - (2) a failure to comply with a requirement of the Uniform Registration of Canadian Money Judgments Act for registration of the judgment.
- (c) A motion filed under this section does not itself stay enforcement of the registered judgment.
- (d) If the court grants a motion under this section, the registration is vacated, and any act under the registration to enforce the registered judgment is void.
- (e) If the court grants a motion under this section on a ground under subdivision (b)(1) of this section, the court also shall render a judgment denying recognition of the Canadian judgment. A judgment rendered under this subsection has the same effect as a judgment denying recognition to a judgment on the same ground under the Uniform Foreign-Country Money Judgments Recognition Act.

Sec. 20. A person that files a motion under subsection (a) of section 19 of this act to vacate registration of a Canadian judgment may request the court to stay enforcement of the judgment pending determination of the motion. The court shall grant the stay if the person establishes a likelihood of success on the merits with regard to a ground listed in subsection (b) of section 19 of this act for vacating a registration. The court may require the person to provide security in an amount determined by the court as a condition of granting the stay.

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

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

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

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

- (1) if the defect in the registration can be cured, file a new registration under the Uniform Registration of Canadian Money Judgments Act; or
- (2) seek recognition of the judgment under section 6 of this act.

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

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

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

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

- (1) Appointee means a person to which a powerholder makes an appointment of appointive property.
- (2) Appointive property means the property or property interest subject to a power of appointment.
- (3) Blanket exercise clause means a clause in an instrument which exercises a power of appointment and is not a specific exercise clause. The term includes a clause that:
 - (A) expressly uses the words "any power" in exercising any power of appointment the powerholder has;
 - (B) expressly uses the words "any property" in appointing any property over which the powerholder has a power of appointment; or
 - (C) disposes of all property subject to disposition by the powerholder.

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

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

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

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

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

(9) Instrument means a record.

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

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

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

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

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

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

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

(i) the occurrence of the specified event;

(ii) the satisfaction of the ascertainable standard; or

(iii) the passage of the specified time; and

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

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

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

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

(19) Terms of the instrument means the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding.

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

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

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

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

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

(1) the instrument creating the power:

(A) is valid under applicable law; and

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

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

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

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

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

Sec. 29. A powerholder may not transfer a power of appointment. If a powerholder dies without exercising or releasing a power, the power lapses.

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

(1) presently exercisable;

(2) exclusionary; and

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

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

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

(2) the permissible appointees of the power are a defined and limited

class that does not include the powerholder's estate, the powerholder's creditors, or the creditors of the powerholder's estate.

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

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

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

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

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

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

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

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

(2) if the terms of the instrument exercising the power:

(A) manifest the powerholder's intent to exercise the power; and

(B) subject to section 37 of this act, satisfy the requirements of exercise, if any, imposed by the donor; and

(3) to the extent the appointment is a permissible exercise of the power.

Sec. 35. (a) In this section:

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

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

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

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

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

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

(4) the powerholder did not release the power.

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

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

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

Sec. 37. A powerholder's substantial compliance with a formal requirement of appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if:

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

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

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

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

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

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

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

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

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

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

(b) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, a powerholder of a nongeneral power may exercise the power in favor of, or create a new power of appointment in, a descendant of a deceased permissible appointee whether or not the descendant is described by the donor as a permissible appointee.

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

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

Sec. 41. If a powerholder exercises a power of appointment in a

disposition that also disposes of property the powerholder owns, the owned property and the appointive property must be allocated in the permissible manner that best carries out the powerholder's intent.

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

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

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

(A) passes to:

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) passes to the permissible appointees if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 51. A powerholder may revoke or amend a release of a power of appointment only to the extent that:

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

(2) the powerholder reserves a power of revocation or amendment in the

instrument of release.

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

- (1) not to exercise the power; or
- (2) to exercise the power if the contract when made does not confer a benefit on an impermissible appointee.

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

- (1) is also the donor of the power; and
- (2) has reserved the power in a revocable trust.

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

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

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

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

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

- (1) the powerholder, to the same extent as if the powerholder owned the appointive property, if the power is presently exercisable; and
- (2) the powerholder's estate, to the extent the estate is insufficient to satisfy the claim and subject to the right of a decedent to direct the source from which liabilities are paid, if the power is exercisable at the powerholder's death.

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

- (1) the powerholder, to the extent the powerholder's property is insufficient, if the power is presently exercisable; and
- (2) the powerholder's estate, to the extent the estate is insufficient, subject to the right of a decedent to direct the source from which liabilities are paid.

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

Sec. 57. (a) For purposes of the Uniform Powers of Appointment Act, and except as otherwise provided in subsection (b) of this section, a power to withdraw property from a trust is treated, during the time the power may be exercised, as a presently exercisable general power of appointment to the extent of the property subject to the power to withdraw.

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

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

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

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

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

Sec. 60. The Uniform Powers of Appointment Act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Sec. 61. (a) Except as otherwise provided in the Uniform Powers of

Appointment Act, on and after the effective date of this act:

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

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

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

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

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

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

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

30-24,129 (a) Thirty days after the death of a decedent, any person claiming as successor to the decedent's interest in real property in this state may file or cause to be filed on his or her behalf, with the register of deeds office of a county in which the real property of the decedent that is the subject of the affidavit is located, an affidavit describing the real property owned by the decedent and the interest of the decedent in the property. The affidavit shall be signed by all persons claiming as successors or by parties legally acting on their behalf and shall be prima facie evidence of the facts stated in the affidavit. The affidavit shall state:

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

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

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

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

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

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

(7) the claiming successor's relationship to the decedent and the value of the entire estate of the decedent subject to probate; and

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

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

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

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

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

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

(2) The debt accruing under subsection (1) of this section arises during the life of the recipient but shall be held in abeyance until the death of the recipient. Any such debt to the department that exists when the recipient dies shall be recovered only after the death of the recipient's spouse, if any, and

only after the recipient is not survived by a child who either is under twenty-one years of age or is blind or totally and permanently disabled as defined by the Supplemental Security Income criteria. In recovering such debt, the department shall not foreclose on a lien on the home of the recipient (a) if a sibling of the recipient with an equity interest in the home has lawfully resided in the home for at least one year before the recipient's admission and has lived there continuously since the date of the recipient's admission or (b) while the home is the residence of an adult child who has lived in the recipient's home for at least two years immediately before the recipient was institutionalized, has lived there continuously since that time, and can establish to the satisfaction of the department that he or she provided care that delayed the recipient's admission.

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

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

(b) For purposes of this section:

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

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

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

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

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

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

(C) Life estate interests in real estate after sixty months from the date of recording a deed with retention of a life estate by the recipient of medical assistance; and

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

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

~~the claim from the other nonprobate transferees or assets in a court of applicable jurisdiction. Except as otherwise provided in this section and except for the right of the department to recover the debt from such interests in property, this subsection in and of itself does not create any rights in any other person or entity.~~

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 65. In the Uniform Easement Relocation Act:

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

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

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

(B) ensuring the availability of real property for agricultural, forest,

outdoor-recreational, or open-space uses;

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

(D) maintaining or enhancing air or water quality;

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

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

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

(4) Easement means a nonpossessory property interest that:

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

(B) imposes on the owner or possessor a duty not to interfere with the entry, use, or enjoyment permitted by the instrument creating the easement or, in the case of an easement not established by express grant or reservation, the entry, use, or enjoyment authorized by law.

(5) Easement holder means:

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

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

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

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

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

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

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

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

(12) Record, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

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

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

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

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

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

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

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

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

Sec. 66. (a) Except as otherwise provided in subsection (b) of this section, the Uniform Easement Relocation Act applies to an easement established by express grant or reservation or by prescription, implication, necessity, estoppel, or other method.

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

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

(2) an easement or right-of-way held by a public power and irrigation

district, irrigation district, reclamation district, or canal company; or

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

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

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

(1) lessen the utility of the easement;

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

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

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

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

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

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

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

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

(1) shall serve a summons and complaint on:

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

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

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

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

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

(c) A complaint under this section must state:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) specify conditions to be satisfied by the servient estate owner to

relocate the easement and construct improvements necessary for the easement holder to enter, use, and enjoy the easement in the new location;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) record, in the land records of each jurisdiction where the servient estate is located, an affidavit certifying that the easement has been relocated; and

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

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

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

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

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

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

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

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

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

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

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

Sec. 74. The right of a servient estate owner to relocate an easement under the Uniform Easement Relocation Act may not be waived, excluded, or

restricted by agreement even if:

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

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

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

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

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

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

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

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