

AMENDMENTS TO LB810

(Amendments to E & R amendments, ER180)

Introduced by Seiler

1           1. Insert the following new sections:

2           Section 1. Section 8-1401, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           8-1401 (1) No person organized under the Business  
5 Corporation Act, the Credit Union Act, the Nebraska Banking Act,  
6 the Nebraska Industrial Development Corporation Act, the Nebraska  
7 Nonprofit Corporation Act, the Nebraska Professional Corporation  
8 Act, the Nebraska Trust Company Act, or Chapter 8, article 3, or  
9 otherwise authorized to conduct business in Nebraska or organized  
10 under the laws of the United States, shall be required to disclose  
11 any records or information, financial or otherwise, that it deems  
12 confidential concerning its affairs or the affairs of any person  
13 with which it is doing business to any person, party, agency, or  
14 organization, unless:

15           (a) The disclosure relates to a lawyers trust account  
16 and is required to be made to the Counsel for Discipline of the  
17 Nebraska Supreme Court pursuant to a rule adopted by the Nebraska  
18 Supreme Court;

19           (b) The disclosure is governed by rules for discovery  
20 promulgated pursuant to section 25-1273.01;

21           (c) The disclosure is made pursuant to section 3 of this  
22 act;

1           ~~(e)~~ (d) The request for disclosure is made by a law  
2 enforcement agency regarding a crime, a fraud, or any other  
3 unlawful activity in which the person to whom the request for  
4 disclosure is made is or may be a victim of such crime, fraud, or  
5 unlawful activity;

6           ~~(d)~~ (e) The request for disclosure is made by a  
7 governmental agency which is a duly constituted supervisory  
8 regulatory agency of the person to whom the request for disclosure  
9 is made and the disclosure relates to examinations, audits,  
10 investigations, or inquiries of such persons;

11           ~~(e)~~ (f) The request for disclosure is made pursuant to  
12 subpoena issued under the laws of this state by a governmental  
13 agency exercising investigatory or adjudicative functions with  
14 respect to a matter within the agency's jurisdiction;

15           ~~(f)~~ (g) The production of records is pursuant to a  
16 written demand of the Tax Commissioner under section 77-375;

17           ~~(g)~~ (h) There is first presented to such person a  
18 subpoena, summons, or warrant issued by a court of competent  
19 jurisdiction;

20           ~~(h)~~ (i) A statute by its terms or rules and regulations  
21 adopted and promulgated thereunder requires the disclosure, other  
22 than by subpoena, summons, warrant, or court order;

23           ~~(i)~~ (j) There is presented to such person an order of a  
24 court of competent jurisdiction setting forth the exact nature and  
25 limits of such required disclosure and a showing that all persons  
26 to be affected by such order have had reasonable notice and an  
27 opportunity to be heard upon the merits of such order;

1           ~~(j)~~ (k) The request for disclosure relates to information  
2 or records regarding the balance due, monthly payments due, payoff  
3 amounts, payment history, interest rates, due dates, or similar  
4 information for indebtedness owed by a deceased person when the  
5 request is made by a person having an ownership interest in real  
6 estate or personal property which secures such indebtedness owed to  
7 the person to whom the request for disclosure is made; or

8           ~~(k)~~ (1) There is first presented to such person the  
9 written permission of the person about whom records or information  
10 is being sought authorizing the release of the requested records or  
11 information.

12           (2) Any person who makes a disclosure of records or  
13 information as required by this section shall not be held civilly  
14 or criminally liable for such disclosure in the absence of malice,  
15 bad faith, intent to deceive, or gross negligence.

16           Sec. 2. Section 8-1402, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18           8-1402 (1) Any person, party, agency, or organization  
19 requesting disclosure of records or information pursuant to  
20 section 8-1401 shall pay the costs of providing such records or  
21 information, unless:

22           (a) The request for disclosure is made pursuant to  
23 subdivision (1)(a) of section 8-1401 and a Nebraska Supreme Court  
24 rule provides for the method of payment;

25           (b) The request is made pursuant to subdivision (1)(b) of  
26 section 8-1401 and the rules for discovery provide for the method  
27 of payment;

1 (c) The request for disclosure is made pursuant to  
2 subdivision ~~(1)(e) or (1)(d)~~ (1)(d) or (1)(e) of section 8-1401;

3 (d) Otherwise ordered by a court of competent  
4 jurisdiction; or

5 (e) The person making the disclosure waives any or all of  
6 the costs.

7 (2) The requesting person, party, agency, or organization  
8 shall pay five dollars per hour per person for the time actually  
9 spent on the service or, if such person can show that its actual  
10 expense in providing the records or information was greater than  
11 five dollars per hour per person, it shall be paid the actual cost  
12 of providing the records or information.

13 (3) No person authorized to receive payment pursuant to  
14 subsection (1) of this section has an obligation to provide any  
15 records or information pursuant to section 8-1401 until assurances  
16 are received that the costs due under this section will be paid,  
17 except for requests made pursuant to subdivisions ~~(1)(e), (1)(d),~~  
18 ~~(1)(e),~~ and ~~(1)(f)~~ (1)(e), (1)(g), (1)(h), and (1)(i) of section  
19 8-1401.

20 Sec. 3. (1) This section does not apply to:

21 (a) Real property owned by a decedent; or

22 (b) The contents of a safety deposit box rented by  
23 a decedent from a state-chartered or federally chartered bank,  
24 savings bank, building and loan association, savings and loan  
25 association, or credit union.

26 (2) After the death of a decedent, a person (a) indebted  
27 to the decedent or (b) having possession of (i) personal property,

1 (ii) an instrument evidencing a debt, (iii) an obligation, (iv)  
2 a chose in action, (v) a life insurance policy, (vi) a bank  
3 account, (vii) a certificate of deposit, or (viii) intangible  
4 property, including annuities, fixed income investments, mutual  
5 funds, cash, money market accounts, or stocks, belonging to the  
6 decedent, shall furnish the value of the indebtedness or property  
7 on the date of death and the names of the known or designated  
8 beneficiaries of property described in this subsection to a person  
9 who is (A) an heir at law of the decedent, (B) a devisee of the  
10 decedent or a person nominated as a personal representative in a  
11 will of the decedent, or (C) an agent or attorney authorized in  
12 writing by any such person described in subdivision (A) or (B) of  
13 this subdivision, with a copy of such authorization attached to  
14 the affidavit, and who also presents an affidavit containing the  
15 information required by subsection (3) of this section.

16 (3) An affidavit presented under subsection (2) of this  
17 section shall state:

18 (a) The name, address, social security number if  
19 available, and date of death of the decedent;

20 (b) The name and address of the affiant and that the  
21 affiant is (A) an heir at law of the decedent, (B) a devisee of  
22 the decedent or a person nominated as a personal representative in  
23 a will of the decedent, or (C) an agent or attorney authorized in  
24 writing by any such person described in subdivision (A) or (B) of  
25 this subdivision;

26 (c) That the disclosure of the value on the date of  
27 death is necessary to determine whether the decedent's estate can

1 be administered under the summary procedures set forth in section  
2 30-24,125 to assist in the determination of the inheritance tax in  
3 an estate that is not subject to probate or to assist a conservator  
4 or guardian in the preparation of a final accounting subsequent to  
5 the death of the decedent;

6 (d) That the affiant is answerable and accountable for  
7 the information received to the decedent's personal representative,  
8 if any, or to any other person having a superior right to the  
9 property or indebtedness;

10 (e) That the affiant swears or affirms that all  
11 statements in the affidavit are true and material and further  
12 acknowledges that any false statement may subject the person to  
13 penalties relating to perjury under section 28-915; and

14 (f) That no application or petition for the appointment  
15 of a personal representative is pending or has been granted in any  
16 jurisdiction.

17 (4) A person presented with an affidavit under subsection  
18 (2) of this section shall provide the requested information within  
19 five business days after being presented with the affidavit.

20 (5) A person who acts in good faith reliance on an  
21 affidavit presented under subsection (2) of this section is immune  
22 from liability for the disclosure of the requested information.

23 Sec. 4. Section 8-1403, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 8-1403 For purposes of sections 8-1401 and 8-1402 and  
26 section 3 of this act:

27 (1) Governmental agency means any agency, department, or

1 commission of this state or any authorized officer, employee, or  
2 agent of such agency, department, or commission;

3 (2) Law enforcement agency means an agency or department  
4 of this state or of any political subdivision of this state that  
5 obtains, serves, and enforces arrest warrants or that conducts or  
6 engages in prosecutions for violations of the law; and

7 (3) Person means any individual, corporation,  
8 partnership, limited liability company, association, joint  
9 stock association, trust, unincorporated organization, and any  
10 other legal entity.

11 Sec. 5. Section 30-2201, Revised Statutes Cumulative  
12 Supplement, 2012, is amended to read:

13 30-2201 Sections 30-2201 to 30-2902, 30-3901 to 30-3923,  
14 and 30-4001 to 30-4045 and section 6 of this act shall be known and  
15 may be cited as the Nebraska Probate Code.

16 Sec. 6. (1) For purposes of this section:

17 (a) Custodian means a bank, savings and loan association,  
18 credit union, or other institution acting as a lessor of a safe  
19 deposit box; and

20 (b) Representative of a custodian means an authorized  
21 officer or employee of a custodian.

22 (2) (a) If a decedent at the time of his or her death  
23 was a sole or last surviving joint lessee of a safe deposit box,  
24 the custodian shall, prior to notice that a personal representative  
25 or special administrator has been appointed for such decedent's  
26 estate, allow access to the safe deposit box to determine whether  
27 the safe deposit box contains an instrument that appears to be an

1 original will of the decedent, a deed to a burial plot, or burial  
2 instructions. The following persons may have such access:

3 (i) A person who presents an affidavit described in  
4 subsection (4) of this section that affiant reasonably believes  
5 that he or she is either (A) an heir at law of the decedent,  
6 (B) a devisee of the decedent or a person nominated as a personal  
7 representative as shown in a photocopy of a will which is attached  
8 to such affidavit, or (C) the agent or attorney specifically  
9 authorized in writing by a person described in subdivision  
10 (2) (a) (i) (A) or (B) of this section; or

11 (ii) A person who, under the terms of the safe deposit  
12 box lease or a power of attorney at the time of the decedent's  
13 death, was legally permitted to enter the safe deposit box, unless  
14 otherwise provided by the lease or the power of attorney.

15 (b) If a person described in subdivision (2) (a) of this  
16 section desires access to a safe deposit box but does not possess  
17 a key to the box, the custodian may open the safe deposit box  
18 by any means necessary at the person's request and expense or the  
19 custodian may require the person to obtain a court order for the  
20 custodian to open the safe deposit box at the requesting person's  
21 expense. The custodian shall retain, in a secure location at such  
22 person's expense, the contents of the box other than a purported  
23 will, deed to a burial plot, and burial instructions. A custodian  
24 shall deliver a purported will as described in subdivision (5) (b)  
25 of this section. A person described in subdivision (2) (a) (i) of  
26 this section may remove a deed to a burial plot and burial  
27 instructions that are not part of a purported will pursuant to



1 subdivision (5)(d) of this section, and the custodian shall not  
2 prevent the removal. Expenses incurred by a custodian or by the  
3 person seeking the documents pursuant to this section shall be  
4 considered an estate administration expense.

5 (3) A representative of the custodian shall be present  
6 during the entry of a safe deposit box pursuant to this section.

7 (4) The affidavit referred to in subdivision (2)(a)(i) of  
8 this section shall state:

9 (a) That the sole or last surviving lessor of a safe  
10 deposit box has died and the date of his or her death, and a copy  
11 of the death certificate shall be attached;

12 (b) If the person submitting the affidavit is an attorney  
13 or agent of the affiant, that such appointment is for the purpose  
14 of accompanying the opening of the safe deposit box. In lieu of  
15 this statement, the appointment shall accompany the affidavit; and

16 (c) That the affiant:

17 (i) (A) Is an heir at law of the deceased lessor and a  
18 description of such person's relationship to the deceased lessor;

19 (B) Is reasonably thought to be a devisee of the decedent  
20 based on the provisions of a will, a photocopy of which is  
21 submitted with the affidavit; or

22 (C) Is reasonably thought to be nominated as personal  
23 representative pursuant to the terms of a will, a photocopy of  
24 which is submitted with the affidavit;

25 (ii) Swears or affirms that all statements in the  
26 affidavit are true and material and further acknowledges that  
27 any false statement may subject the person to penalties relating to

1 perjury under section 28-915; and

2 (iii) Has no knowledge of an application or petition for  
3 the appointment of a personal representative pending or granted in  
4 any jurisdiction.

5 (5) (a) If an instrument purporting to be a will is found  
6 in a safe deposit box as the result of an entry pursuant to  
7 subsection (2) of this section, the representative of the custodian  
8 shall remove the purported will.

9 (b) The custodian shall mail the purported will by  
10 registered or certified mail or deliver the purported will in  
11 person to the clerk of the county court of the county in which the  
12 decedent was a resident. If the custodian is unable to determine  
13 the county of residence of the decedent, the custodian shall mail  
14 the purported will by registered or certified mail or deliver the  
15 purported will in person to the office of the clerk of the county  
16 court of the county in which the safe deposit box is located.

17 (c) At the request of the person or persons authorized  
18 to have access to the safe deposit box under subsection (2) of  
19 this section, the representative of the custodian shall copy each  
20 purported will of the decedent, at the expense of the requesting  
21 person, and shall deliver the copy of each purported will to the  
22 person, or if directed by the person, to the person's agent or  
23 attorney. In copying any purported will, the representative of the  
24 custodian shall not remove any staples or other fastening devices  
25 or disassemble the purported will in any way.

26 (d) If the safe deposit box contains a deed to a burial  
27 plot or burial instructions that are not a part of a purported

1 will, the person or persons authorized to have access to the safe  
2 deposit box under subsection (2) of this section may remove these  
3 instruments or request that the representative of the custodian  
4 copy the deed to the burial plot or burial instructions at the  
5 expense of the requesting person.

6 (6) This section does not limit the right of a personal  
7 representative or a special administrator for the decedent, or a  
8 successor of the decedent pursuant to section 30-24,125, to have  
9 access to the safe deposit box as otherwise provided by law.

10 (7) Unless limited by the safe deposit box lease, a  
11 surviving co-lessee of the safe deposit box may continue to enter  
12 the safe deposit box notwithstanding the death of the decedent.

13 (8) A custodian shall not be liable to a person for an  
14 action taken pursuant to this section or for a failure to act in  
15 accordance with the requirements of this section unless the action  
16 or failure to act is shown to have resulted from the custodian's  
17 bad faith, gross negligence, or intentional misconduct.

18 Sec. 8. The Revisor of Statutes shall assign section 6 of  
19 this act within Chapter 30, article 24, part 1.

20 Sec. 9. Original sections 8-1401, 8-1402, and 8-1403,  
21 Reissue Revised Statutes of Nebraska, and section 30-2201, Revised  
22 Statutes Cumulative Supplement, 2012, are repealed.

23 2. Renumber the remaining sections accordingly.