

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 43

FINAL READING

Introduced by Coash, 27.

Read first time January 08, 2015

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Nebraska Probate Code; to amend
2 sections 30-2619, 30-3002, 30-3003, 30-3004, and 30-3005, Reissue
3 Revised Statutes of Nebraska, and section 30-2201, Revised Statutes
4 Cumulative Supplement, 2014; to provide for appointment of standby
5 guardians for incapacitated persons; to transfer and change
6 provisions regarding recovery of estate assets; to provide for
7 recovery of assets of wards as prescribed; to provide enforcement
8 procedures; to harmonize provisions; and to repeal the original
9 sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-2201, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 30-2201 Sections 30-2201 to 30-2902, 30-3901 to 30-3923, and 30-4001
4 to 30-4045, sections 3 to 8 of this act, and the Public Guardianship Act
5 shall be known and may be cited as the Nebraska Probate Code.

6 Sec. 2. Section 30-2619, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 30-2619 (a) The person alleged to be incapacitated or any person
9 interested in his or her welfare may petition for a finding of incapacity
10 and appointment of a guardian or a standby guardian. The petition shall
11 be verified and shall contain specific allegations with regard to each of
12 the areas as provided under section 30-2619.01 in which the petitioner
13 claims that the person alleged to be incapacitated lacks sufficient
14 understanding to make or communicate responsible decisions concerning his
15 or her own person. An interested person may file a motion to make more
16 definite and certain requesting a specific description of the functional
17 limitations and physical and mental condition of the person alleged to be
18 incapacitated with the specific reasons prompting the request for
19 guardianship.

20 (b) Upon the filing of a petition, the court shall set a date for
21 hearing on the issues of incapacity and unless the person alleged to be
22 incapacitated has retained counsel of his or her own choice or has
23 otherwise indicated a desire for an attorney of his or her own choice,
24 the court may appoint an attorney to represent him or her in the
25 proceeding. The court may appoint a guardian ad litem to advocate for the
26 best interests of the person alleged to be incapacitated.

27 (c) The person alleged to be incapacitated may be examined by a
28 physician appointed by the court. The physician shall submit his or her
29 report in writing to the court and may be interviewed by a visitor, if so
30 appointed pursuant to sections 30-2619.01 and 30-2624, sent by the court.

31 (d) The person alleged to be incapacitated is entitled to be present

1 at the hearing in person and to see and hear all evidence bearing upon
2 his or her condition. He or she is entitled to be present by counsel, to
3 compel the attendance of witnesses, to present evidence, to cross-examine
4 witnesses, including the court-appointed physician and the visitor
5 appointed by the court pursuant to sections 30-2619.01 and 30-2624, and
6 to appeal any final orders or judgments. The issue may be determined at a
7 closed hearing only if the person alleged to be incapacitated or his or
8 her counsel so requests.

9 (e) At any hearing conducted under this section, the court may
10 designate one or more standby guardians of the person whose appointment
11 will become effective immediately upon the death, unwillingness or
12 inability to act, resignation, or removal by the court of the initially
13 appointed guardian and upon compliance with any rules promulgated by the
14 Supreme Court. The standby guardian shall have the same powers and duties
15 as the initially appointed guardian. The standby guardian shall receive a
16 copy of the order establishing or modifying the initial guardianship and
17 the order designating the standby guardian. Upon assuming office, the
18 standby guardian shall so notify the court in writing. Upon notification
19 and upon compliance with any rules promulgated by the Supreme Court, the
20 court shall issue new letters of guardianship that specify that the
21 standby guardianship appointment is permanent. A standby guardian shall
22 complete the training required by section 30-2601.01 at the time or times
23 required by rules promulgated by the Supreme Court or as otherwise
24 provided by order of the county court.

25 (f) The Public Guardian shall not be appointed as a standby
26 guardian.

27 Sec. 3. For purposes of sections 3 to 8 of this act:

28 (1) Agent of the ward includes any person appointed as an agent
29 under a power of attorney executed by or on behalf of a ward or which
30 purports to have been executed by or on behalf of a ward;

31 (2) Conservator or guardian includes a special fiduciary appointed

1 by a court to investigate the actions of an agent of the ward, the
2 conservator, or the guardian;

3 (3) Personal representative includes a special administrator; and

4 (4) Ward means an incapacitated person or a protected person as
5 defined in section 30-2601.

6 Sec. 4. Section 30-3002, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 ~~30-3002~~ If a any personal representative, heir, devisee, creditor,
9 or other person interested in the estate of any deceased person or a
10 conservator or guardian for a ward complains shall complain to the judge
11 of the county court, upon an application under ~~on an~~ oath given on
12 information and belief, that (1) any person may have concealed,
13 embezzled, carried away, or disposed of any money or personal property,
14 goods, or chattels of the deceased or the ward, or that (2) such person
15 may have in his or her possession or knowledge any deeds, conveyances,
16 bonds, contracts, or other writings, which contain evidence of or tend to
17 disclose the right, title, interest, or claim of the deceased or the ward
18 to any real or personal estate, or any claim or demand, (3) such person
19 may have in his or her possession any will of the deceased or any power
20 of attorney, advance health care directive, or power of attorney for
21 health care decisions executed by the ward, or (4) such person may have
22 information or knowledge withheld by the respondent from the personal
23 representative, conservator, or guardian and needed by the personal
24 representative, conservator, or guardian for the recovery of any property
25 by suit or otherwise or any will of the deceased, the judge may cite such
26 person to appear before the court of probate. Any personal
27 representative, heir, devisee, creditor, conservator, guardian, or other
28 person interested in the estate of such deceased person or the ward may
29 examine such person under ~~upon~~ oath upon the matter of such complaint or
30 direct interrogatories to him or her. The citation may also direct the
31 person cited to bring with him or her, for examination by the judge and

1 parties interested, any such documents or writings, or any will of the
2 deceased, which may be in his or her possession or under his or her
3 control.

4 Sec. 5. Section 30-3003, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 ~~30-3003~~ If the person ~~so~~ cited under section 4 of this act refuses
7 (1) shall refuse to appear and submit to such examination, (2) or to
8 answer such interrogatories as may be put to him or her touching the
9 matter of such complaint, or (3) to bring with him or her any of the
10 documents or writings set forth in the citation which may be in his or
11 her possession or control, the court may, by warrant, commit such person
12 ~~him~~ to the county jail of the county to remain in custody until he or she
13 submits shall submit to the order of the court. All such interrogatories
14 and answers shall be in writing, ~~and~~ shall be signed by the party
15 examined, and shall be filed in the county court.

16 Sec. 6. Section 30-3004, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 ~~30-3004~~ The judge of the county court, upon the complaint under ~~an~~
19 oath of any personal representative, may cite any person who has shall
20 ~~have~~ been entrusted by such personal representative with any part of the
21 estate of the deceased person, to appear before such court, and may
22 require such person to render under oath a full account, ~~on oath,~~ of any
23 money, goods, chattels, bonds, accounts, or other papers belonging to
24 such estate which ~~shall~~ have come into ~~to~~ his or her possession, in trust
25 for such personal representative, and of his or her proceedings thereon.
26 If ~~, and if~~ a person so cited refuses shall refuse to appear and render
27 such account, the court may proceed against such person ~~him~~ as provided
28 in section 5 of this act ~~30-3003~~.

29 Sec. 7. The judge of the county court, upon the complaint under
30 oath of any conservator or guardian, may cite any person who has been
31 entrusted by such conservator or guardian with any part of the estate of

1 the ward, any current, suspended, or former conservator or guardian of
2 the ward, or any agent of the ward to appear before such court and may
3 require such person to render under oath a full account of any money,
4 goods, chattels, bonds, accounts, or other papers belonging to such
5 estate which have come into his or her possession, in trust for such
6 ward, conservator, or guardian, and of his or her proceedings thereon. If
7 a person so cited refuses to appear and render such account, the court
8 may proceed against such person as provided in section 5 of this act.

9 Sec. 8. Section 30-3005, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 ~~30-3005~~ (1) If any such person as described in sections 4 to 7 of
12 this act ~~30-3002 to 30-3004~~ is not in the county where administration is
13 granted, the proceedings under sections 4 to 7 of this act ~~30-3002 to~~
14 ~~30-3004~~ may be had before the county judge of the county where such
15 person resides or may be found. A certified copy of the written
16 interrogatories, if any, and the examination or other proceeding thereon
17 or connected therewith shall be filed in the county court of the county
18 where administration is granted. If the person so cited refuses to appear
19 or answer such interrogatories as may be allowed to be put to him or her
20 touching the matter charged, such person he may be punished as provided
21 in section 5 of this act ~~30-3003~~.

22 (2) If the respondent is the personal representative, conservator,
23 or guardian, the court may appoint a special administrator or other
24 special fiduciary to represent the estate or the ward.

25 Sec. 9. Original sections 30-2619, 30-3002, 30-3003, 30-3004, and
26 30-3005, Reissue Revised Statutes of Nebraska, and section 30-2201,
27 Revised Statutes Cumulative Supplement, 2014, are repealed.