

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 43

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

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

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

30 (d) The person alleged to be incapacitated is entitled to be present
31 at the hearing in person and to see and hear all evidence bearing upon

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

8 (e) At any hearing conducted under this section, the court may
9 designate one or more standby guardians of the person whose appointment
10 will become effective immediately upon the death, unwillingness or
11 inability to act, resignation, or removal by the court of the initially
12 appointed guardian. The standby guardian shall have the same powers and
13 duties as the initially appointed guardian. The standby guardian shall
14 receive a copy of the order establishing or modifying the initial
15 guardianship and the order designating the standby guardian. Upon
16 assuming office, the standby guardian shall so notify the court in
17 writing. Upon notification, the court shall issue new letters of
18 guardianship that specify that the standby guardianship is permanent.

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

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

23 (2) Conservator or guardian includes a special fiduciary appointed
24 by a court to investigate the actions of an agent of the ward, the
25 conservator, or the guardian;

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

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

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

31 ~~30-3002~~ If a any personal representative, heir, devisee, creditor,

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

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

29 ~~30-3003~~ If the person ~~so~~ cited under section 4 of this act refuses
30 (1) shall refuse to appear and submit to such examination, (2) or to
31 answer such interrogatories as may be put to him or her touching the

1 matter of such complaint, or (3) to bring with him or her any of the
2 documents or writings set forth in the citation which may be in his or
3 her possession or control, the court may, by warrant, commit such person
4 ~~him~~ to the county jail of the county to remain in custody until he or she
5 submits ~~shall submit~~ to the order of the court. All such interrogatories
6 and answers shall be in writing, ~~and~~ shall be signed by the party
7 examined, and shall be filed in the county court.

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

10 ~~30-3004~~ The judge of the county court, upon the complaint under ~~on~~
11 oath of any personal representative, may cite any person who has ~~shall~~
12 ~~have~~ been entrusted by such personal representative with any part of the
13 estate of the deceased person, to appear before such court, and may
14 require such person to render under oath a full account, ~~on oath,~~ of any
15 money, goods, chattels, bonds, accounts, or other papers belonging to
16 such estate which ~~shall~~ have come into ~~to~~ his or her possession, in trust
17 for such personal representative, and of his or her proceedings thereon.
18 If ~~, and if~~ a person so cited refuses ~~shall refuse~~ to appear and render
19 such account, the court may proceed against such person ~~him~~ as provided
20 in section 5 of this act ~~30-3003~~.

21 Sec. 7. The judge of the county court, upon the complaint under
22 oath of any conservator or guardian, may cite any person who has been
23 entrusted by such conservator or guardian with any part of the estate of
24 the ward or any agent of the ward to appear before such court and may
25 require such person to render under oath a full account of any money,
26 goods, chattels, bonds, accounts, or other papers belonging to such
27 estate which have come into his or her possession, in trust for such
28 ward, conservator, or guardian, and of his or her proceedings thereon. If
29 a person so cited refuses to appear and render such account, the court
30 may proceed against such person as provided in section 5 of this act.

31 Sec. 8. Section 30-3005, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 ~~30-3005~~ (1) If any such person as described in sections 4 to 7 of
3 this act ~~30-3002 to 30-3004~~ is not in the county where administration is
4 granted, the proceedings under sections 4 to 7 of this act ~~30-3002 to~~
5 ~~30-3004~~ may be had before the county judge of the county where such
6 person resides or may be found. A certified copy of the written
7 interrogatories, if any, and the examination or other proceeding thereon
8 or connected therewith shall be filed in the county court of the county
9 where administration is granted. If the person so cited refuses to appear
10 or answer such interrogatories as may be allowed to be put to him or her
11 touching the matter charged, such person he may be punished as provided
12 in section 5 of this act ~~30-3003~~.

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

16 Sec. 9. Original sections 30-2619, 30-3002, 30-3003, 30-3004, and
17 30-3005, Reissue Revised Statutes of Nebraska, and section 30-2201,
18 Revised Statutes Cumulative Supplement, 2014, are repealed.