

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 104**

FINAL READING

Introduced by Bolz, 29.

Read first time January 06, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to health care decisions; to amend sections  
2 25-2728 and 30-1601, Reissue Revised Statutes of Nebraska, and  
3 section 71-4843, Revised Statutes Cumulative Supplement, 2016; to  
4 adopt the Health Care Surrogacy Act; to provide penalties; to  
5 provide for appeals; to change provisions relating to anatomical  
6 gifts; to harmonize provisions; and to repeal the original sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 19 of this act shall be known and may be  
2 cited as the Health Care Surrogacy Act.

3           Sec. 2. (1) It is the intent of the Legislature to establish a  
4 process for the designation of a person to make a health care decision  
5 for an adult or an emancipated minor who becomes incapable of making such  
6 a decision in the absence of a guardian or an advance health care  
7 directive.

8           (2) The Legislature does not intend to encourage or discourage any  
9 particular health care decision or to create any new right or alter any  
10 existing right of competent adults or emancipated minors to make such  
11 decisions, but the Legislature does intend through the Health Care  
12 Surrogacy Act to allow an adult or an emancipated minor to exercise  
13 rights he or she already possesses by means of health care decisions made  
14 on his or her behalf by a qualified surrogate.

15           (3) The Health Care Surrogacy Act shall not confer any new rights  
16 regarding the provision or rejection of any specific medical treatment  
17 and shall not alter any existing law concerning homicide, suicide, or  
18 assisted suicide. Nothing in the Health Care Surrogacy Act shall be  
19 construed to condone, authorize, or approve purposefully causing, or  
20 assisting in causing, the death of any individual, such as by homicide,  
21 suicide, or assisted suicide.

22           Sec. 3. For purposes of the Health Care Surrogacy Act:

23           (1) Adult means an individual who is nineteen years of age or older;

24           (2) Advance health care directive means an individual instruction  
25 under the Health Care Surrogacy Act, a declaration executed in accordance  
26 with the Rights of the Terminally Ill Act, or a power of attorney for  
27 health care;

28           (3) Agent means a natural person designated in a power of attorney  
29 for health care to make a health care decision on behalf of the natural  
30 person granting the power;

31           (4) Capable means (a) able to understand and appreciate the nature

1 and consequences of a proposed health care decision, including the  
2 benefits of, risks of, and alternatives to any proposed health care, and  
3 (b) able to communicate in any manner such health care decision;

4 (5) Emancipated minor means a minor who is emancipated pursuant to  
5 the law of this state or another state, including section 43-2101;

6 (6) Guardian means a judicially appointed guardian or conservator  
7 having authority to make a health care decision for a natural person;

8 (7) Health care means any care, treatment, service, procedure, or  
9 intervention to maintain, diagnose, cure, care for, treat, or otherwise  
10 affect an individual's physical or mental condition;

11 (8)(a) Health care decision means a decision made by an individual  
12 or the individual's agent, guardian, or surrogate regarding the  
13 individual's health care, including consent, refusal of consent, or  
14 withdrawal of consent to health care; and

15 (b) Health care decision includes:

16 (i) Selection and discharge of health care providers, health care  
17 facilities, and health care services;

18 (ii) Approval or disapproval of diagnostic tests, surgical  
19 procedures, programs of medication, and orders not to resuscitate; and

20 (iii) Directions to provide nutrition, hydration, and all other  
21 forms of health care;

22 (9) Health care facility means a facility licensed under the Health  
23 Care Facility Licensure Act or permitted by law to provide health care in  
24 the ordinary course of business;

25 (10) Health care provider means a natural person credentialed under  
26 the Uniform Credentialing Act or permitted by law to provide health care  
27 in the ordinary course of business or practice of a profession;

28 (11) Health care service means an adult day service, a home health  
29 agency, a hospice or hospice service, a respite care service, or a  
30 children's day health service licensed under the Health Care Facility  
31 Licensure Act or permitted by law to provide health care in the ordinary

1 course of business. Health care service does not include an in-home  
2 personal services agency as defined in section 71-6501;

3 (12) Incapable means lacking the ability to understand and  
4 appreciate the nature and consequences of a proposed health care  
5 decision, including the benefits of, risks of, and alternatives to any  
6 proposed health care, or lacking the ability to communicate in any manner  
7 such health care decision;

8 (13) Individual means an adult or an emancipated minor for whom a  
9 health care decision is to be made;

10 (14) Individual instruction means an individual's direction  
11 concerning a health care decision for the individual;

12 (15) Life-sustaining procedure means any medical procedure,  
13 treatment, or intervention that (a) uses mechanical or other artificial  
14 means to sustain, restore, or supplant a spontaneous vital function and  
15 (b) when applied to a person who is in a terminal condition or who is in  
16 a persistent vegetative state, serves only to prolong the dying process.  
17 Life-sustaining procedure does not include routine care necessary to  
18 maintain patient comfort or the usual and typical provision of nutrition  
19 and hydration;

20 (16) Persistent vegetative state means a medical condition that, to  
21 a reasonable degree of medical certainty as determined in accordance with  
22 then current accepted medical standards, is characterized by a total and  
23 irreversible loss of consciousness and capacity for cognitive interaction  
24 with the environment and no reasonable hope of improvement;

25 (17) Physician means a natural person licensed to practice medicine  
26 and surgery or osteopathic medicine under the Uniform Credentialing Act;

27 (18) Power of attorney for health care means the designation of an  
28 agent under sections 30-3401 to 30-3432 or a similar law of another state  
29 to make health care decisions for the principal;

30 (19) Primary health care provider means (a) a physician designated  
31 by an individual or the individual's agent, guardian, or surrogate to

1 have primary responsibility for the individual's health care or, in the  
2 absence of a designation or if the designated physician is not reasonably  
3 available, a physician who undertakes the responsibility or (b) if there  
4 is no such primary physician or such primary physician is not reasonably  
5 available, the health care provider who has undertaken primary  
6 responsibility for an individual's health care;

7 (20) Principal means a natural person who, when competent, confers  
8 upon another natural person a power of attorney for health care;

9 (21) Reasonably available means readily able to be contacted without  
10 undue effort and willing and able to act in a timely manner considering  
11 the urgency of an individual's health care needs;

12 (22) State means a state of the United States, the District of  
13 Columbia, the Commonwealth of Puerto Rico, or a territory or insular  
14 possession subject to the jurisdiction of the United States;

15 (23) Surrogate means a natural person who is authorized under  
16 section 4 of this act to make a health care decision on behalf of an  
17 individual when a guardian or an agent under a power of attorney for  
18 health care has not been appointed or otherwise designated for such  
19 individual;

20 (24) Terminal condition means a medical condition caused by injury,  
21 disease, or physical illness which, to a reasonable degree of medical  
22 certainty, will result in death within six months regardless of the  
23 continued application of medical treatment, including life-sustaining  
24 procedures; and

25 (25) Usual and typical provision of nutrition and hydration means  
26 delivery of food and fluids orally, including by cup, eating utensil,  
27 bottle, or drinking straw.

28 Sec. 4. (1) A surrogate may make a health care decision for an  
29 individual if the individual has been determined to be incapable by the  
30 primary health care provider and no agent or guardian has been appointed  
31 for the individual. A determination that an individual is incapable of

1 making a health care decision shall not be construed as a finding that  
2 the individual is incapable for any other purpose.

3 (2)(a) An individual may designate a natural person to act as  
4 surrogate for the individual by personally informing the primary health  
5 care provider.

6 (b) If an individual has not designated a surrogate and there is no  
7 power of attorney for health care or court-appointed guardian for the  
8 individual, any member of the following classes of natural persons, in  
9 the following order of priority, may act as surrogate for the individual  
10 if such person is reasonably available at the time the health care  
11 decision is to be made on behalf of the individual and if such person has  
12 not been disqualified under the Health Care Surrogacy Act:

13 (i) The individual's spouse unless legally separated from the  
14 individual or unless proceedings are pending for divorce, annulment, or  
15 legal separation between the individual and his or her spouse;

16 (ii) A child of the individual who is an adult or an emancipated  
17 minor;

18 (iii) A parent of the individual; or

19 (iv) A brother or sister of the individual who is an adult or an  
20 emancipated minor.

21 (c) A person in a class with greater priority to serve as a  
22 surrogate may decline to serve as surrogate by informing the primary  
23 health care provider of that fact. Such fact shall be noted in the  
24 individual's medical record.

25 (d) The primary health care provider may use discretion to  
26 disqualify a person who would otherwise be eligible to act as a surrogate  
27 based on the priority listed in subdivision (b) of this subsection if the  
28 provider has documented or otherwise clear and convincing evidence of an  
29 abusive relationship or documented or otherwise clear and convincing  
30 evidence of another basis for finding that the potential surrogate is not  
31 acting on behalf of or in the best interests of the individual. Any

1 evidence so used to disqualify a person from acting as a surrogate shall  
2 be documented in full in the individual's medical record.

3 (3) A person who has exhibited special care and concern for the  
4 individual, who is familiar with the individual's personal values, and  
5 who is reasonably available to act as a surrogate is eligible to act as a  
6 surrogate under subsection (2) of this section.

7 (4) A surrogate shall communicate his or her assumption of authority  
8 as promptly as possible to the members of the individual's family  
9 specified in subsection (2) of this section who can be readily contacted.

10 (5)(a) If more than one member of a class having priority has  
11 authority to act as an individual's surrogate, such persons may act as  
12 the individual's surrogate and any of such persons may be identified as  
13 one of the individual's surrogates by the primary health care provider  
14 within the individual's medical record, so long as such persons are in  
15 agreement about the health care decision to be made on behalf of the  
16 individual and attest to such agreement in a writing signed and dated by  
17 all persons claiming the authority and provided to the primary health  
18 care provider for inclusion with the individual's medical record.

19 (b)(i) If two or more members of a class having the same priority  
20 claim authority to act as an individual's surrogate and such persons are  
21 not in agreement about one or more health care decisions to be made on  
22 the individual's behalf, the persons claiming authority shall confer with  
23 each other for purposes of arriving at consensus regarding the health  
24 care decision to be made in light of the individual's known desires about  
25 health care, the individual's personal values, the individual's religious  
26 or moral beliefs, and the individual's best interests. Each person  
27 claiming authority to act as an individual's surrogate shall inform the  
28 primary health care provider about his or her claim and priority under  
29 the Health Care Surrogacy Act, the claim of any other person within the  
30 same class, the nature of the disagreement regarding the health care  
31 decision, and the efforts made by such person to reach agreement between

1 and among other persons claiming authority to act as the individual's  
2 surrogate.

3 (ii) To the extent possible, the primary health care provider shall  
4 seek a consensus of the persons claiming authority to act as the  
5 individual's surrogate. The primary health care provider may convene a  
6 meeting of such persons with the primary health care provider and, as  
7 available and appropriate, other health care personnel involved in the  
8 individual's care for purposes of reviewing and discussing the  
9 individual's condition, prognosis, and options for treatment, the risks,  
10 benefits, or burdens of such options, the individual's known desires  
11 about health care, the individual's personal values, the individual's  
12 religious or moral beliefs, and the individual's best interests. If  
13 reasonably available, the primary health care provider may include  
14 members of other classes of priority in such meeting to hear and  
15 participate in the discussion.

16 (iii) The primary health care provider, in his or her discretion or  
17 at the request of the persons claiming authority as the individual's  
18 surrogate, may also seek the assistance of other health care providers or  
19 the ethics committee or ethics consultation process of the health care  
20 facility or another health care entity to facilitate the meeting.

21 (iv) If a consensus about the health care decisions to be made on  
22 behalf of the individual cannot be attained between the persons of the  
23 same class of priority claiming authority to act as the individual's  
24 surrogate to enable a timely decision to be made on behalf of the  
25 individual, then such persons shall be deemed disqualified to make health  
26 care decisions on behalf of the individual. The primary health care  
27 provider may then confer with other persons in the same class or within  
28 the other classes of lower priority consistent with subsection (2) of  
29 this section who may be reasonably available to make health care  
30 decisions on behalf of the individual.

31 (v) If no other person is reasonably available to act as a surrogate



1 on behalf of the individual, then the primary health care provider may,  
2 consistent with the Health Care Surrogacy Act, take actions or decline to  
3 take actions determined by the primary health care provider to be  
4 appropriate, to be in accordance with the individual's personal values,  
5 if known, and moral and religious beliefs, if known, and to be in the  
6 best interests of the individual.

7 (6) A surrogate's authority shall continue in effect until the  
8 earlier of any of the following:

9 (a) A guardian is appointed for the individual;

10 (b) The primary health care provider determines that the individual  
11 is capable of making his or her own health care decision;

12 (c) A person with higher priority to act as a surrogate under  
13 subsection (2) of this section becomes reasonably available;

14 (d) The individual is transferred to another health care facility;  
15 or

16 (e) The death of the individual.

17 (7)(a) An individual, if able to communicate the same, may  
18 disqualify another person from serving as the individual's surrogate,  
19 including a member of the individual's family, by a signed and dated  
20 writing or by personally informing the primary health care provider and a  
21 witness of the disqualification. In order to be a witness under this  
22 subdivision, a person shall be an adult or emancipated minor who is not  
23 among the persons who may serve as a surrogate under subsection (2) of  
24 this section.

25 (b) When the existence of a disqualification under this subsection  
26 becomes known, it shall be made a part of the individual's medical record  
27 at the health care facility in which the individual is a patient or  
28 resides. The disqualification of a person to serve as a surrogate shall  
29 not revoke or terminate the authority as to a surrogate who acts in good  
30 faith under the surrogacy and without actual knowledge of the  
31 disqualification. An action taken in good faith and without actual

1 knowledge of the disqualification of a person to serve as the  
2 individual's surrogate under this subsection, unless the action is  
3 otherwise invalid or unenforceable, shall bind the individual and his or  
4 her heirs, devisees, and personal representatives.

5 (8) A primary health care provider may require a person claiming the  
6 right to act as surrogate for an individual to provide a written  
7 declaration under penalty of perjury stating facts and circumstances  
8 reasonably sufficient to establish that person's claimed authority.

9 (9) The authority of a surrogate shall not supersede any other  
10 advance health care directive.

11 Sec. 5. Unless related to the individual by blood, marriage, or  
12 adoption, a surrogate may not be an owner, operator, or employee of a  
13 health care facility at which the individual is residing or receiving  
14 health care or a facility or an institution of the Department of  
15 Correctional Services or the Department of Health and Human Services to  
16 which the individual has been committed.

17 Sec. 6. (1) A determination that an individual is incapable of  
18 making a health care decision shall be made in writing by the primary  
19 health care provider and any physician consulted with respect to such  
20 determination, and the physician or physicians shall document the cause  
21 and nature of the individual's incapability. The determination shall be  
22 included in the individual's medical record with the primary health care  
23 provider and, when applicable, with the consulting physician and the  
24 health care facility in which the individual is a patient or resides.  
25 When a surrogate has been designated or determined pursuant to section 4  
26 of this act, the surrogate shall be included in the individual's medical  
27 record.

28 (2) A physician who has been designated an individual's surrogate  
29 shall not make the determination that the individual is incapable of  
30 making health care decisions.

31 Sec. 7. Notice of a determination that an individual is incapable

1 of making health care decisions shall be given by the primary health care  
2 provider (1) to the individual when there is any indication of the  
3 individual's ability to comprehend such notice, (2) to the surrogate, and  
4 (3) to the health care facility.

5       Sec. 8. If a dispute arises as to whether the individual is  
6 incapable, a petition may be filed with the county court in the county in  
7 which the individual resides or is located requesting the court's  
8 determination as to whether the individual is incapable of making health  
9 care decisions. If such a petition is filed, the court shall appoint a  
10 guardian ad litem to represent the individual. The court shall conduct a  
11 hearing on the petition within seven days after the court's receipt of  
12 the petition. Within seven days after the hearing, the court shall issue  
13 its determination. If the court determines that the individual is  
14 incapable, the authority, rights, and responsibilities of the  
15 individual's surrogate shall become effective. If the court determines  
16 that the individual is capable, the authority, rights, and  
17 responsibilities of the surrogate shall not become effective.

18       Sec. 9. (1) When the authority conferred on a surrogate under the  
19 Health Care Surrogacy Act has commenced, the surrogate, subject to any  
20 individual instructions, shall make health care decisions on the  
21 individual's behalf, except that the surrogate shall not have authority  
22 (a) to consent to any act or omission to which the individual could not  
23 consent under law, (b) to make any decision when the individual is known  
24 to be pregnant that will result in the death of the individual's unborn  
25 child if it is probable that the unborn child will develop to the point  
26 of live birth with continued application of health care, or (c) to make  
27 decisions regarding withholding or withdrawing a life-sustaining  
28 procedure or withholding or withdrawing artificially administered  
29 nutrition or hydration except as provided under section 10 of this act.

30       (2) If no agent or guardian has been appointed for the individual,  
31 the surrogate shall have priority over any person other than the

1 individual to act for the individual in all health care decisions, except  
2 that the surrogate shall not have the authority to make any health care  
3 decision unless and until the individual has been determined to be  
4 incapable of making health care decisions pursuant to section 6 of this  
5 act.

6 (3) A person who would not otherwise be personally responsible for  
7 the cost of health care provided to the individual shall not become  
8 personally responsible for such cost because he or she has acted as the  
9 individual's surrogate.

10 (4) Except to the extent that the right is limited by the  
11 individual, a surrogate shall have the same right as the individual to  
12 receive information regarding the proposed health care, to receive and  
13 review medical and clinical records, and to consent to the disclosures of  
14 such records, except that the right to access such records shall not be a  
15 waiver of any evidentiary privilege.

16 (5) Notwithstanding a determination pursuant to section 6 of this  
17 act that the individual is incapable of making health care decisions,  
18 when the individual objects to the determination or to a health care  
19 decision made by a surrogate, the individual's objection or decision  
20 shall prevail unless the individual is determined by a county court to be  
21 incapable of making health care decisions.

22 Sec. 10. (1) In exercising authority under the Health Care  
23 Surrogacy Act, a surrogate shall have a duty to consult with medical  
24 personnel, including the primary health care provider, and thereupon to  
25 make health care decisions (a) in accordance with the individual  
26 instructions or the individual's wishes as otherwise made known to the  
27 surrogate or (b) if the individual's wishes are not reasonably known and  
28 cannot with reasonable diligence be ascertained, in accordance with the  
29 individual's best interests, with due regard for the individual's  
30 religious and moral beliefs if known.

31 (2) Notwithstanding subdivision (1)(b) of this section, the

1 surrogate shall not have the authority to consent to the withholding or  
2 withdrawing of a life-sustaining procedure or artificially administered  
3 nutrition or hydration unless (a) the individual is suffering from a  
4 terminal condition or is in a persistent vegetative state and such  
5 procedure or care would be an extraordinary or disproportionate means of  
6 medical treatment to the individual and (b) the individual explicitly  
7 grants such authority to the surrogate and the intent of the individual  
8 to have life-sustaining procedures or artificially administered nutrition  
9 or hydration withheld or withdrawn under such circumstances is  
10 established by clear and convincing evidence.

11 (3) In exercising any decision, the surrogate shall have no  
12 authority to withhold or withdraw consent to routine care necessary to  
13 maintain patient comfort or the usual and typical provision of nutrition  
14 and hydration.

15 Sec. 11. Before acting upon a health care decision made by a  
16 surrogate, other than those decisions made at or about the time of the  
17 initial determination of incapacity, the primary health care provider  
18 shall confirm that the individual continues to be incapable. The  
19 confirmation shall be stated in writing and shall be included in the  
20 individual's medical records. The notice requirements set forth in  
21 section 7 of this act shall not apply to the confirmation required by  
22 this section.

23 Sec. 12. (1) A petition may be filed for any one or more of the  
24 following purposes:

25 (a) To determine whether the authority of a surrogate under the  
26 Health Care Surrogacy Act is in effect or has been revoked or terminated;

27 (b) To determine whether the acts or proposed acts of a surrogate  
28 are consistent with the individual instruction or the individual's wishes  
29 as expressed or otherwise established by clear and convincing evidence  
30 or, when the wishes of the individual are unknown, whether the acts or  
31 proposed acts of the surrogate are clearly contrary to the best interests

1 of the individual;

2 (c) To declare that the authority of a surrogate is revoked upon a  
3 determination by the court that the surrogate made or proposed to make a  
4 health care decision for the individual that authorized an illegal act or  
5 omission; or

6 (d) To declare that the authority of a surrogate is revoked upon a  
7 determination by the court of both of the following: (i) That the  
8 surrogate has violated, failed to perform, or is unable to perform the  
9 duty to act in a manner consistent with the individual instruction or the  
10 wishes of the individual or, when the desires of the individual are  
11 unknown, to act in a manner that is in the best interests of the  
12 individual; and (ii) that at the time of the determination by the court,  
13 the individual is unable to disqualify the surrogate as provided in  
14 subsection (7) of section 4 of this act.

15 (2) A petition under this section shall be filed with the county  
16 court of the county in which the individual resides or is located.

17 Sec. 13. A petition under section 8 or 12 of this act may be filed  
18 by any of the following:

19 (1) The individual;

20 (2) The surrogate;

21 (3) The spouse, parent, sibling, or child of the individual who is  
22 an adult or an emancipated minor;

23 (4) A close friend of the individual who is an adult or an  
24 emancipated minor;

25 (5) The primary health care provider or another health care  
26 provider; or

27 (6) Any other interested party.

28 Sec. 14. (1) A surrogate shall not be guilty of any criminal  
29 offense, subject to any civil liability, or in violation of any  
30 professional oath or code of ethics or conduct for any action taken in  
31 good faith pursuant to the Health Care Surrogacy Act.

1       (2) No primary health care provider, other health care provider, or  
2 health care facility shall be subject to criminal prosecution, civil  
3 liability, or professional disciplinary action for acting or declining to  
4 act in reliance upon the decision made by a person whom the primary  
5 health care provider or other health care provider in good faith believes  
6 is the surrogate. This subsection does not limit the liability of a  
7 primary health care provider, other health care provider, or health care  
8 facility for a negligent act or omission in connection with the medical  
9 diagnosis, treatment, or care of the individual.

10       Sec. 15. The existence of a surrogate for an individual under the  
11 Health Care Surrogacy Act does not waive the right of the individual to  
12 routine hygiene, nursing, and comfort care and the usual and typical  
13 provision of nutrition and hydration.

14       Sec. 16. In following the decision of a surrogate, a health care  
15 provider shall exercise the same independent medical judgment that the  
16 health care provider would exercise in following the decision of the  
17 individual if the individual were not incapable.

18       Sec. 17. (1) Nothing in the Health Care Surrogacy Act obligates a  
19 health care facility to honor a health care decision by a surrogate that  
20 the health care facility would not honor if the decision had been made by  
21 the individual because the decision is contrary to a formally adopted  
22 policy of the health care facility that is expressly based on religious  
23 beliefs or sincerely held ethical or moral convictions central to the  
24 operating principles of the health care facility. The health care  
25 facility may refuse to honor the decision whether made by the individual  
26 or by the surrogate if the health care facility has informed the  
27 individual or the surrogate of such policy, if reasonably possible. If  
28 the surrogate is unable or unwilling to arrange a transfer to another  
29 health care facility, the health care facility refusing to honor the  
30 decision may intervene to facilitate such a transfer.

31       (2) Nothing in the Health Care Surrogacy Act obligates a health care

1 provider to honor or cooperate with a health care decision by a surrogate  
2 that the health care provider would not honor or cooperate with if the  
3 decision had been made by the individual because the decision is contrary  
4 to the health care provider's religious beliefs or sincerely held moral  
5 or ethical convictions. The health care provider shall promptly inform  
6 the surrogate and the health care facility of his or her refusal to honor  
7 or cooperate with the decision of the surrogate. In such event, the  
8 health care facility shall promptly assist in the transfer of the  
9 individual to a health care provider selected by the individual or the  
10 surrogate.

11       Sec. 18. For purposes of making health care decisions, an attempted  
12 suicide by an individual shall not be construed as any indication of his  
13 or her wishes with regard to health care.

14       Sec. 19. (1) It shall be a Class II felony for a person to  
15 willfully conceal or destroy evidence of any person's disqualification as  
16 a surrogate under the Health Care Surrogacy Act with the intent and  
17 effect of causing the withholding or withdrawing of life-sustaining  
18 procedures or artificially administered nutrition or hydration which  
19 hastens the death of the individual.

20       (2) It shall be a Class I misdemeanor for a person without the  
21 authorization of the individual to willfully alter, forge, conceal, or  
22 destroy evidence of an advance health care directive, appointment of a  
23 guardian, appointment of an agent for the individual under a power of  
24 attorney for health care, or evidence of disqualification of any person  
25 as a surrogate under the Health Care Surrogacy Act.

26       (3) A physician or other health care provider who willfully prevents  
27 the transfer of an individual in accordance with section 17 of this act  
28 with the intention of avoiding the provisions of the Health Care  
29 Surrogacy Act shall be guilty of a Class I misdemeanor.

30       Sec. 20. Section 25-2728, Reissue Revised Statutes of Nebraska, is  
31 amended to read:



1           25-2728 (1) Any party in a civil case and any defendant in a  
2 criminal case may appeal from the final judgment or final order of the  
3 county court to the district court of the county where the county court  
4 is located. In a criminal case, a prosecuting attorney may obtain review  
5 by exception proceedings pursuant to sections 29-2317 to 29-2319.

6           (2) Sections 25-2728 to 25-2738 shall not apply to:

7           (a) Appeals in eminent domain proceedings as provided in sections  
8 76-715 to 76-723;

9           (b) Appeals in proceedings in the county court sitting as a juvenile  
10 court as provided in sections 43-2,106 and 43-2,106.01;

11           (c) Appeals in matters arising under the Nebraska Probate Code as  
12 provided in section 30-1601;

13           (d) Appeals in matters arising under the Nebraska Uniform Trust  
14 Code;

15           (e) Appeals in matters arising under the Health Care Surrogacy Act  
16 as provided in section 30-1601;

17           (f) ~~(e)~~ Appeals in adoption proceedings as provided in section  
18 43-112;

19           (g) ~~(f)~~ Appeals in inheritance tax proceedings as provided in  
20 section 77-2023; and

21           (h) ~~(g)~~ Appeals in domestic relations matters as provided in section  
22 25-2739.

23           Sec. 21. Section 30-1601, Reissue Revised Statutes of Nebraska, is  
24 amended to read:

25           30-1601 (1) In all matters arising under the Nebraska Probate Code,  
26 ~~and~~ in all matters in county court arising under the Nebraska Uniform  
27 Trust Code, and in all matters in county court arising under the Health  
28 Care Surrogacy Act, appeals may be taken to the Court of Appeals in the  
29 same manner as an appeal from district court to the Court of Appeals.

30           (2) An appeal may be taken by any party and may also be taken by any  
31 person against whom the final judgment or final order may be made or who

1 may be affected thereby.

2 (3) When the appeal is by someone other than a personal  
3 representative, conservator, trustee, guardian, ~~or~~ guardian ad litem, or  
4 surrogate pursuant to the Health Care Surrogacy Act the appealing party  
5 shall, within thirty days after the entry of the judgment or final order  
6 complained of, deposit with the clerk of the county court a supersedeas  
7 bond or undertaking in such sum as the court shall direct, with at least  
8 one good and sufficient surety approved by the court, conditioned that  
9 the appellant will satisfy any judgment and costs that may be adjudged  
10 against him or her, including costs under subsection (6) of this section,  
11 unless the court directs that no bond or undertaking need be deposited.  
12 If an appellant fails to comply with this subsection, the Court of  
13 Appeals on motion and notice may take such action, including dismissal of  
14 the appeal, as is just.

15 (4) The appeal shall be a supersedeas for the matter from which the  
16 appeal is specifically taken, but not for any other matter. In appeals  
17 pursuant to sections 30-2601 to 30-2661, upon motion of any party to the  
18 action, the county court may remove the supersedeas or require the  
19 appealing party to deposit with the clerk of the county court a bond or  
20 other security approved by the court in an amount and conditioned in  
21 accordance with sections 30-2640 and 30-2641. Once the appeal is  
22 perfected, the court having jurisdiction over the appeal may, upon motion  
23 of any party to the action, reimpose or remove the supersedeas or require  
24 the appealing party to deposit with the clerk of the court a bond or  
25 other security approved by the court in an amount and conditioned in  
26 accordance with sections 30-2640 and 30-2641. Upon motion of any  
27 interested person or upon the court's own motion, the county court may  
28 appoint a special guardian or conservator pending appeal despite any  
29 supersedeas order.

30 (5) The judgment of the Court of Appeals shall not vacate the  
31 judgment in the county court. The judgment of the Court of Appeals shall

1 be certified without cost to the county court for further proceedings  
2 consistent with the determination of the Court of Appeals.

3 (6) If it appears to the Court of Appeals that an appeal was taken  
4 vexatiously or for delay, the court shall adjudge that the appellant  
5 shall pay the cost thereof, including an attorney's fee, to the adverse  
6 party in an amount fixed by the Court of Appeals, and any bond required  
7 under subsection (3) of this section shall be liable for the costs.

8 Sec. 22. Section 71-4843, Revised Statutes Cumulative Supplement,  
9 2016, is amended to read:

10 71-4843 (a) For purposes of this section:

11 (1) Advance health care directive means a power of attorney for  
12 health care or a record signed or authorized by a prospective donor  
13 containing the prospective donor's direction concerning a health care  
14 decision for the prospective donor;

15 (2) Declaration means a record signed by a prospective donor  
16 specifying the circumstances under which life-sustaining treatment may be  
17 withheld or withdrawn from the prospective donor; and

18 (3) Health care decision means any decision regarding the health  
19 care of the prospective donor.

20 (b) If a prospective donor has a declaration or advance health care  
21 directive and the terms of the declaration or directive and the express  
22 or implied terms of a potential anatomical gift are in conflict with  
23 regard to the administration of measures necessary to ensure the medical  
24 suitability of a part for transplantation or therapy, the prospective  
25 donor's attending physician and prospective donor shall confer to resolve  
26 the conflict. If the prospective donor is incapable of resolving the  
27 conflict, an agent acting under the prospective donor's declaration or  
28 directive, or, if none or the agent is not reasonably available, a  
29 surrogate acting under the Health Care Surrogacy Act or another person  
30 authorized by law other than the Revised Uniform Anatomical Gift Act to  
31 make health care decisions on behalf of the prospective donor, shall act

1 for the donor to resolve the conflict. The conflict must be resolved as  
2 expeditiously as possible. Information relevant to the resolution of the  
3 conflict may be obtained from the appropriate procurement organization  
4 and any other person authorized to make an anatomical gift for the  
5 prospective donor under section 71-4832. Before resolution of the  
6 conflict, measures necessary to ensure the medical suitability of the  
7 part from a prospective donor may not be administered if it is determined  
8 that the administration of those measures would not provide the  
9 prospective donor with appropriate end-of-life care or it can be  
10 anticipated by reasonable medical judgment that such measures would cause  
11 the prospective donor's death other than by the prospective donor's  
12 underlying pathology. If the conflict is not resolved expeditiously, the  
13 direction of the declaration or advanced directive controls.

14       Sec. 23. Original sections 25-2728 and 30-1601, Reissue Revised  
15 Statutes of Nebraska, and section 71-4843, Revised Statutes Cumulative  
16 Supplement, 2016, are repealed.