

AMENDMENTS TO LB501

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

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

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

7 (1) Foreign country means a government other than:

8 (A) the United States;

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

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

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

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

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

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

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

26 (1) a judgment for taxes;

27 (2) a fine or other penalty; or

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

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

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

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

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

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

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

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

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

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

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

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

31 (5) the proceeding in the foreign court was contrary to an agreement

1 between the parties under which the dispute in question was to be
2 determined otherwise than by proceedings in that foreign court;

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

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

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

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

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

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

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

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

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

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

1 office in the foreign country; or

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

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

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

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

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

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

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

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

30 Sec. 9. An action to recognize a foreign-country judgment must be
31 commenced within the earlier of the time during which the foreign-country

1 judgment is effective in the foreign country or fifteen years from the
2 date that the foreign-country judgment became effective in the foreign
3 country.

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

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

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

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

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

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

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

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

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

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

5 Sec. 16. (a) A person seeking recognition of a Canadian judgment
6 described in section 15 of this act to enforce the judgment may register
7 the judgment in the office of the clerk of a court in which an action for
8 recognition of the judgment could be filed under section 6 of this act.

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

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

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

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

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

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

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

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

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

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

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

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

11 (9) a statement that:

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

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

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

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

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

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

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

30 REGISTRATION OF CANADIAN MONEY JUDGMENT

31 Complete and file this form, together with the documents required by

1 Part V of this form, with the Clerk of Court. When stating an amount of
2 money, identify the currency in which the amount is stated.

3 PART I. IDENTIFICATION OF CANADIAN JUDGMENT

4 Canadian Court Rendering the Judgment:

5 Case/Docket Number in Canadian Court:

6 Name of Plaintiff(s):

7 Name of Defendant(s):

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

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

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

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

20 Name of Person(s) Registering Judgment:

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

25 Address of Person(s) Registering Judgment:

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

28 Telephone Number:

29 FAX Number:

30 Email Address:

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

1 any:

2 Address:

3 Telephone Number:

4 FAX Number:

5 Email Address:

6 Name of Person(s) Against Whom Judgment is Being

7 Registered:

8 Address of Person(s) Against Whom Judgment is Being

9 Registered: (provide the most recent address
10 known)

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

13 Telephone Number:

14 FAX Number:

15 Email Address:

16 PART III. CALCULATION OF AMOUNT FOR WHICH ENFORCEMENT IS SOUGHT

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

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

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

22 The applicable rate of interest is

23 The date when interest began to accrue
24 is

25 The part of the judgment to which the interest applies
26 is

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

31 The person registering the Canadian judgment claims postjudgment

1 costs and expenses in the amount of and postjudgment
2 attorney's fees in the amount of relating to the part
3 of the judgment being registered (include only costs, expenses, and
4 attorney's fees incurred before registration).

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

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

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

11 PART IV. STATEMENT OF PERSON REGISTERING JUDGMENT

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

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

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

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

21 PART V. ITEMS REQUIRED TO BE INCLUDED WITH REGISTRATION

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

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

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

29 A registration fee determined by the Supreme Court.

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

1 Submitted by:

2 Signature of [Person Registering Judgment]

3 [Attorney for Person Registering Judgment]

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

6 Date of submission:

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

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

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

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

25 (c) Notice under this section must include:

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

28 (2) the docket number assigned to the registration;

29 (3) the name and address of:

30 (A) the person registering the judgment; and

31 (B) the person's attorney, if any;

1 (4) a copy of the registration, including the documents required
2 under subsection (b) of section 16 of this act; and

3 (5) a statement that:

4 (A) the person against whom the judgment has been registered, not
5 later than thirty days after the date of service of notice, may motion
6 the court to vacate the registration; and

7 (B) the court for cause may provide for a shorter or longer time.

8 (d) Proof of service of notice under this section must be filed with
9 the clerk of the court.

10 Sec. 19. (a) Not later than thirty days after notice under section
11 18 of this act is served, the person against whom the judgment was
12 registered may motion the court to vacate the registration. The court for
13 cause may provide for a shorter or longer time for filing the motion.

14 (b) A motion under this section may assert only:

15 (1) a ground that could be asserted to deny recognition of the
16 judgment under the Uniform Foreign-Country Money Judgments Recognition
17 Act; or

18 (2) a failure to comply with a requirement of the Uniform
19 Registration of Canadian Money Judgments Act for registration of the
20 judgment.

21 (c) A motion filed under this section does not itself stay
22 enforcement of the registered judgment.

23 (d) If the court grants a motion under this section, the
24 registration is vacated, and any act under the registration to enforce
25 the registered judgment is void.

26 (e) If the court grants a motion under this section on a ground
27 under subdivision (b)(1) of this section, the court also shall render a
28 judgment denying recognition of the Canadian judgment. A judgment
29 rendered under this subsection has the same effect as a judgment denying
30 recognition to a judgment on the same ground under the Uniform Foreign-
31 Country Money Judgments Recognition Act.

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

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

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

16 (1) by registration under the Uniform Registration of Canadian Money
17 Judgments Act; or

18 (2) under section 6 of this act.

19 (c) Subject to subsection (d) of this section, a person may not seek
20 recognition in this state of the same judgment or part of a judgment
21 described in subsection (b) or (c) of section 15 of this act with regard
22 to the same person under both the Uniform Registration of Canadian Money
23 Judgments Act and section 6 of this act.

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

27 (1) if the defect in the registration can be cured, file a new
28 registration under the Uniform Registration of Canadian Money Judgments
29 Act; or

30 (2) seek recognition of the judgment under section 6 of this act.

31 Sec. 22. In applying and construing the Uniform Registration of

1 Canadian Money Judgments Act, consideration must be given to the need to
2 promote uniformity of the law with respect to its subject matter among
3 states that enact it.

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

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

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

11 (1) Appointee means a person to which a powerholder makes an
12 appointment of appointive property.

13 (2) Appointive property means the property or property interest
14 subject to a power of appointment.

15 (3) Blanket exercise clause means a clause in an instrument which
16 exercises a power of appointment and is not a specific exercise clause.
17 The term includes a clause that:

18 (A) expressly uses the words "any power" in exercising any power of
19 appointment the powerholder has;

20 (B) expressly uses the words "any property" in appointing any
21 property over which the powerholder has a power of appointment; or

22 (C) disposes of all property subject to disposition by the
23 powerholder.

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

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

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

31 (7) Gift in default clause means a clause identifying a taker in

1 default of appointment.

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

4 (9) Instrument means a record.

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

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

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

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

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

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

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

24 (i) the occurrence of the specified event;

25 (ii) the satisfaction of the ascertainable standard; or

26 (iii) the passage of the specified time; and

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

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

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

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

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

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

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

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

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

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

23 (1) the instrument creating the power:

24 (A) is valid under applicable law; and

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

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

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

1 appointment.

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

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

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

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

12 (1) presently exercisable;

13 (2) exclusionary; and

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

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

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

18 (2) the permissible appointees of the power are a defined and
19 limited class that does not include the powerholder's estate, the
20 powerholder's creditors, or the creditors of the powerholder's estate.

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

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

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

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

1 (1) the instrument creating the power is revocable by the donor; or
2 (2) the donor reserves a power of revocation or amendment in the
3 instrument creating the power of appointment.

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

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

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

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

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

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

13 Sec. 35. (a) In this section:

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

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

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

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

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

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

27 (4) the powerholder did not release the power.

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

30 (1) except as otherwise provided in subdivision (2) of this section,
31 a blanket exercise clause extends to a power acquired by the powerholder

1 after executing the instrument containing the clause; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Sec. 41. If a powerholder exercises a power of appointment in a
16 disposition that also disposes of property the powerholder owns, the
17 owned property and the appointive property must be allocated in the
18 permissible manner that best carries out the powerholder's intent.

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

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

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

26 (A) passes to:

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

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

31 (B) if there is no taker under subdivision (A) of this subdivision,

1 passes under a reversionary interest to the donor or the donor's
2 transferee or successor in interest.

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

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

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

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

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

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

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

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

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

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

26 (A) passes to the permissible appointees if:

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

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

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

1 transferee or successor in interest.

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

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

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

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

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

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

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

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

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

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

31 (1) by substantial compliance with a method provided in the terms of

1 the instrument creating the power; or

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

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

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

9 (2) the powerholder reserves a power of revocation or amendment in
10 the instrument of release.

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

13 (1) not to exercise the power; or

14 (2) to exercise the power if the contract when made does not confer
15 a benefit on an impermissible appointee.

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

19 (1) is also the donor of the power; and

20 (2) has reserved the power in a revocable trust.

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

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

29 (b) Appointive property subject to a general power of appointment
30 created by the powerholder is subject to a claim of a creditor of the
31 powerholder or of the powerholder's estate to the extent provided in the

1 Uniform Voidable Transactions Act.

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

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

13 (1) the powerholder, to the same extent as if the powerholder owned
14 the appointive property, if the power is presently exercisable; and

15 (2) the powerholder's estate, to the extent the estate is
16 insufficient to satisfy the claim and subject to the right of a decedent
17 to direct the source from which liabilities are paid, if the power is
18 exercisable at the powerholder's death.

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

23 (1) the powerholder, to the extent the powerholder's property is
24 insufficient, if the power is presently exercisable; and

25 (2) the powerholder's estate, to the extent the estate is
26 insufficient, subject to the right of a decedent to direct the source
27 from which liabilities are paid.

28 (b) Subject to subsection (c) of section 58 of this act, a power of
29 appointment created by a person other than the powerholder which is
30 subject to an ascertainable standard relating to an individual's health,
31 education, support, or maintenance within the meaning of 26 U.S.C.

1 2041(b)(1)(A) or 26 U.S.C. 2514(c)(1), as such sections existed on
2 January 1, 2021, is treated for purposes of the Uniform Powers of
3 Appointment Act as a nongeneral power.

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

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

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

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

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

30 Sec. 59. In applying and construing the Uniform Powers of
31 Appointment Act, consideration must be given to the need to promote

1 uniformity of the law with respect to its subject matter among states
2 that enact it.

3 Sec. 60. The Uniform Powers of Appointment Act modifies, limits, or
4 supersedes the Electronic Signatures in Global and National Commerce Act,
5 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section
6 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery
7 of any of the notices described in section 103(b) of that act, 15 U.S.C.
8 7003(b).

9 Sec. 61. (a) Except as otherwise provided in the Uniform Powers of
10 Appointment Act, on and after the effective date of this act:

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

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

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

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

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

31 (b) If a right is acquired, extinguished, or barred on the

1 expiration of a prescribed period that commenced under law of this state
2 other than the Uniform Powers of Appointment Act before the effective
3 date of this act, the law continues to apply to the right.

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

6 30-24,129 (a) Thirty days after the death of a decedent, any person
7 claiming as successor to the decedent's interest in real property in this
8 state may file or cause to be filed on his or her behalf, with the
9 register of deeds office of a county in which the real property of the
10 decedent that is the subject of the affidavit is located, an affidavit
11 describing the real property owned by the decedent and the interest of
12 the decedent in the property. The affidavit shall be signed by all
13 persons claiming as successors or by parties legally acting on their
14 behalf and shall be prima facie evidence of the facts stated in the
15 affidavit. The affidavit shall state:

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

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

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

28 (4) the claiming successor is entitled to the real property either
29 by reason of the homestead allowance, exempt property allowance, or
30 family allowance, by intestate succession, or by devise under the will of
31 the decedent. If claiming by devise under the will of the decedent, a

1 copy of such will shall be attached to the affidavit;

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

4 (6) the name and address of any ~~no~~ other person who has a potential
5 right to the interest of the decedent in the described property;

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

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

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

16 Sec. 63. Section 68-919, Revised Statutes Cumulative Supplement,
17 2020, is amended to read:

18 68-919 (1) The recipient of medical assistance under the medical
19 assistance program shall be indebted to the department for the total
20 amount paid for medical assistance on behalf of the recipient if:

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

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

30 (2) The debt accruing under subsection (1) of this section arises
31 during the life of the recipient but shall be held in abeyance until the

1 death of the recipient. Any such debt to the department that exists when
2 the recipient dies shall be recovered only after the death of the
3 recipient's spouse, if any, and only after the recipient is not survived
4 by a child who either is under twenty-one years of age or is blind or
5 totally and permanently disabled as defined by the Supplemental Security
6 Income criteria. In recovering such debt, the department shall not
7 foreclose on a lien on the home of the recipient (a) if a sibling of the
8 recipient with an equity interest in the home has lawfully resided in the
9 home for at least one year before the recipient's admission and has lived
10 there continuously since the date of the recipient's admission or (b)
11 while the home is the residence of an adult child who has lived in the
12 recipient's home for at least two years immediately before the recipient
13 was institutionalized, has lived there continuously since that time, and
14 can establish to the satisfaction of the department that he or she
15 provided care that delayed the recipient's admission.

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

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

30 (b) For purposes of this section:

31 (i) Estate of a recipient of medical assistance means any real

1 estate, personal property, or other asset in which the recipient had any
2 legal title or interest at or immediately preceding the time of the
3 recipient's death, to the extent of such interests. In furtherance and
4 not in limitation of the foregoing, the estate of a recipient of medical
5 assistance also includes:

6 (A) Assets to be transferred to a beneficiary described in section
7 77-2004 or 77-2005 in relation to the recipient through a revocable trust
8 or other similar arrangement which has become irrevocable by reason of
9 the recipient's death; and

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

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

30 (A) Insurance proceeds, any trust account subject to the Burial Pre-
31 Need Sale Act, or any limited lines funeral insurance policy to the

1 extent used to pay for funeral, burial, or cremation expenses of the
2 recipient of medical assistance;

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

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

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

12 ~~(c) As to any interest in property created after August 24, 2017,~~
13 ~~and for as long as any portion of the debt arising under subsection (1)~~
14 ~~of this section remains unpaid, the death of the recipient of medical~~
15 ~~assistance shall not trigger a change in the rights to possession,~~
16 ~~enjoyment, access, income, or otherwise that the recipient had at the~~
17 ~~time of death and the personal representative of the recipient's estate~~
18 ~~is empowered to and shall exercise or enjoy such rights for the purpose~~
19 ~~of paying such debt, including, but not limited to, renting such property~~
20 ~~held as a life estate, severing joint tenancies, bringing partition~~
21 ~~actions, claiming equitable rights of contribution, or taking other~~
22 ~~actions otherwise appropriate to effect the intent of this section. Such~~
23 ~~rights shall survive the death of the recipient of medical assistance and~~
24 ~~shall be administered, marshaled, and disposed of for the purposes of~~
25 ~~this section. In the event that a claim for reimbursement is made as to~~
26 ~~some, but not all, nonprobate transferees or assets, the party or owner~~
27 ~~against whom the claim is asserted may seek equitable contribution toward~~
28 ~~the claim from the other nonprobate transferees or assets in a court of~~
29 ~~applicable jurisdiction. Except as otherwise provided in this section and~~
30 ~~except for the right of the department to recover the debt from such~~
31 ~~interests in property, this subsection in and of itself does not create~~

1 ~~any rights in any other person or entity.~~

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

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

31 (i) The death of the recipient of medical assistance;

1 (ii) The death of the recipient's spouse, if applicable;

2 (iii) The attainment of the age of twenty-one years by the youngest
3 of the recipient's minor children, if applicable; or

4 (iv) A determination that any adult child of the recipient is no
5 longer blind or totally and permanently disabled as defined by the
6 Supplemental Security Income criteria, if applicable.

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

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

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

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

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

1 provided in subdivision (b) of this subsection.

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

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

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

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

15 Sec. 65. In the Uniform Easement Relocation Act:

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

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

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

22 (B) ensuring the availability of real property for agricultural,
23 forest, outdoor-recreational, or open-space uses;

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

26 (D) maintaining or enhancing air or water quality;

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

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

31 (3) Dominant estate means an estate or interest in real property

1 benefited by an appurtenant easement.

2 (4) Easement means a nonpossessory property interest that:

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

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

9 (5) Easement holder means:

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

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

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

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

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

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

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

30 (11) Real property means an estate or interest in, over, or under
31 land, including structures, fixtures, and other things that by custom,

1 usage, or law pass with a conveyance of land whether or not described or
2 mentioned in the contract of sale or instrument of conveyance. The term
3 includes the interest of a lessor and lessee and, unless the interest is
4 personal property under law of this state other than the Uniform Easement
5 Relocation Act, an interest in a common interest community.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (1) lessen the utility of the easement;

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

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

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

29 (5) during the relocation, disrupt the use and enjoyment of the
30 easement by the easement holder or another entitled to use and enjoy the
31 easement, unless the servient estate owner substantially mitigates the

1 duration and nature of the disruption;

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

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

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

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

14 (1) shall serve a summons and complaint on:

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

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

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

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

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

28 (c) A complaint under this section must state:

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

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

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

2 (4) the reason the easement is eligible for relocation under section
3 66 of this act;

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (7) specify conditions to be satisfied by the servient estate owner
9 to relocate the easement and construct improvements necessary for the
10 easement holder to enter, use, and enjoy the easement in the new
11 location;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 servient estate owner shall:

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

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

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

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

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

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

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

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

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

30 (5) does not affect the priority of the easement with respect to
31 other recorded real property interests burdening the area of the servient

1 estate where the easement was located before the relocation; and
2 (6) is not a fraudulent conveyance or voidable transaction under
3 law.

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

7 Sec. 74. The right of a servient estate owner to relocate an
8 easement under the Uniform Easement Relocation Act may not be waived,
9 excluded, or restricted by agreement even if:

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

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

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

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

21 Sec. 76. The Uniform Easement Relocation Act modifies, limits, or
22 supersedes the Electronic Signatures in Global and National Commerce Act,
23 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section
24 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery
25 of any of the notices described in section 103(b) of that act, 15 U.S.C.
26 7003(b).

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

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

1 Sec. 79. Original section 30-24,129, Reissue Revised Statutes of
2 Nebraska, and section 68-919, Revised Statutes Cumulative Supplement,
3 2020, are repealed.