

E AND R AMENDMENTS TO LB 172

Introduced by Murante, 49, Chairman Enrollment and Review

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

3           Section 1. Section 30-2601, Revised Statutes Cumulative  
4 Supplement, 2012, is amended to read:

5           30-2601 Unless otherwise apparent from the context, in  
6 the Nebraska Probate Code:

7           (1) Incapacitated person means any person who is impaired  
8 by reason of mental illness, mental deficiency, physical illness  
9 or disability, chronic use of drugs, chronic intoxication, or  
10 other cause (except minority) to the extent that the person  
11 lacks sufficient understanding or capacity to make or communicate  
12 responsible decisions concerning himself or herself;

13           (2) A protective proceeding is a proceeding under the  
14 provisions of section 30-2630 to determine that a person cannot  
15 effectively manage or apply his or her estate to necessary ends,  
16 either because the person lacks the ability or is otherwise  
17 inconvenienced, or because the person is a minor, and to secure  
18 administration of the person's estate by a conservator or other  
19 appropriate relief;

20           (3) A protected person is a minor or other person for  
21 whom a conservator has been appointed or other protective order has  
22 been made;

23           (4) A ward is a person for whom a guardian has been

1 appointed. A minor ward is a minor for whom a guardian has been  
2 appointed solely because of minority;

3 (5) Full guardianship means the guardian has been granted  
4 all powers which may be conferred upon a guardian by law;

5 (6) Limited guardianship means any guardianship which is  
6 not a full guardianship; and

7 (7) For purposes of article 26 of the Nebraska Probate  
8 Code, interested person means children, spouses, those persons  
9 who would be the heirs if the ward or person alleged to be  
10 incapacitated died without leaving a valid ~~last will and testament~~  
11 who are adults and any trustee of any trust executed by the ward  
12 or person alleged to be incapacitated. After the death of a ward,  
13 interested person also includes the personal representative of a  
14 deceased ward's estate, the deceased ward's heirs in an intestate  
15 estate, and the deceased ward's devisees in a testate estate. The  
16 meaning of interested person as it relates to particular persons  
17 may vary from time to time and must be determined according to the  
18 particular purposes of, and matter involved in, any proceeding. If  
19 there are no persons identified as interested persons above, then  
20 interested person shall also include any person or entity named as  
21 a devisee in the most recently executed ~~last will and testament~~ of  
22 the ward or person alleged to be incapacitated.

23 Sec. 2. Section 30-2628, Revised Statutes Cumulative  
24 Supplement, 2012, is amended to read:

25 30-2628 (a) Except as limited by section 30-2620, a  
26 guardian of an incapacitated person has the same powers, rights,  
27 and duties respecting the guardian's ward that a parent has

1 respecting the parent's unemancipated minor child, except that a  
2 guardian is not liable to third persons for acts of the ward solely  
3 by reason of the parental relationship. In particular, and without  
4 qualifying the foregoing, a guardian has the following powers and  
5 duties, except as may be specified by order of the court:

6 (1) To the extent that it is consistent with the terms  
7 of any order by a court of competent jurisdiction relating to  
8 detention or commitment of the ward, a guardian is entitled to  
9 custody of the person of his or her ward and may establish the  
10 ward's place of abode within this state or, with court permission,  
11 outside of this state. When establishing the ward's place of abode,  
12 a guardian shall make every reasonable effort to ensure that the  
13 placement is the least restrictive alternative. A guardian shall  
14 authorize a placement to a more restrictive environment only after  
15 careful evaluation of the need for such placement. The guardian may  
16 obtain a professional evaluation or assessment that such placement  
17 is in the best interest of the ward.

18 (2) If entitled to custody of his or her ward, a guardian  
19 shall make provision for the care, comfort, and maintenance of  
20 his or her ward and, whenever appropriate, arrange for the ward's  
21 training and education. Without regard to custodial rights of the  
22 ward's person, a guardian shall take reasonable care of his or her  
23 ward's clothing, furniture, vehicles, and other personal effects  
24 and commence protective proceedings if other property of his or her  
25 ward is in need of protection.

26 (3) A guardian may give any consents or approvals  
27 that may be necessary to enable the ward to receive medical,

1 psychiatric, psychological, or other professional care, counsel,  
2 treatment, or service. When making such medical or psychiatric  
3 decisions, the guardian shall consider and carry out the intent of  
4 the ward expressed prior to incompetency to the extent allowable  
5 by law. Notwithstanding this provision or any other provision of  
6 the Nebraska Probate Code, the ward may authorize the release  
7 of financial, medical, and other confidential records pursuant to  
8 sections 20-161 to 20-166.

9 (4) If no conservator for the estate of the ward has been  
10 appointed, a guardian shall, within thirty days after appointment,  
11 prepare and file with the appointing court a complete inventory of  
12 the ward's estate together with the guardian's oath or affirmation  
13 that the inventory is complete and accurate so far as the guardian  
14 is informed. The guardian shall mail a copy thereof by first-class  
15 mail to the ward, if the ward can be located and has attained  
16 the age of fourteen years, and to all other interested persons  
17 as defined in section 30-2601. The guardian shall file with the  
18 court a certificate of mailing showing that copies were sent to all  
19 interested persons by first-class mail along with a form to send  
20 back to the court that indicates if such person wants to continue  
21 receiving notifications about the proceedings. The guardian shall  
22 keep suitable records of the guardian's administration and exhibit  
23 the same on request of any interested person. To the extent a  
24 guardian, who has not been named a conservator, has possession or  
25 control of the ward's estate, the guardian shall file with the  
26 court an updated inventory every year along with ~~an affidavit of~~  
27 ~~mailing~~ a certificate of mailing showing that copies were sent to

1 all interested persons and, if a bond has been required, to the  
2 bonding company by first-class mail, ~~along with a form to send~~  
3 ~~back to the court that indicates if such person wants to continue~~  
4 ~~receiving notifications about the proceedings.~~

5 (5) If no conservator for the estate of the ward has been  
6 appointed, a guardian may:

7 (i) Institute proceedings to compel any person under a  
8 duty to support the ward or to pay sums for the welfare of the ward  
9 to perform such person's duty;

10 (ii) Receive money and tangible property deliverable to  
11 the ward and apply the money and property for support, care, and  
12 education of the ward; but a guardian may not use funds from his  
13 or her ward's estate for room and board which the guardian or the  
14 guardian's spouse, parent, or child has furnished the ward unless a  
15 charge for the service is approved by order of the court made upon  
16 notice to at least one of the next of kin of the ward, if notice is  
17 possible. A guardian must exercise care to conserve any excess for  
18 the ward's needs; and

19 (iii) Exercise a settlor's powers with respect to  
20 revocation, amendment, or distribution of trust property when  
21 authorized by a court acting under the authority of subsection (f)  
22 of section 30-3854. In acting under the authority of subsection (f)  
23 of section 30-3854, the court shall proceed in the same manner as  
24 provided under subdivision (3) of section 30-2637.

25 (6) A guardian is required to report the condition of  
26 his or her ward and of the estate which has been subject to  
27 the guardian's possession or control, at least every year and as

1 required by the court or court rule. The court shall receive from  
2 any interested person, for a period of thirty days after the filing  
3 of the guardian's report, any comments with regard to the need for  
4 continued guardianship or amendment of the guardianship order. If  
5 the court has reason to believe that additional rights should be  
6 returned to the ward or assigned to the guardian, the court shall  
7 set a date for a hearing and may provide all protections as set  
8 forth for the original finding of incapacity and appointment of a  
9 guardian.

10 (7) If a conservator has been appointed, all of the  
11 ward's estate received by the guardian in excess of those funds  
12 expended to meet current expenses for support, care, and education  
13 of the ward must be paid to the conservator for management as  
14 provided in the Nebraska Probate Code, and the guardian must  
15 account to the conservator for funds expended.

16 (b) Any guardian of one for whom a conservator also has  
17 been appointed shall control the custody and care of the ward and  
18 is entitled to receive reasonable sums for the guardian's services  
19 and for room and board furnished to the ward as agreed upon between  
20 the guardian and the conservator if the amounts agreed upon are  
21 reasonable under the circumstances. The guardian may request the  
22 conservator to expend the ward's estate by payment to third persons  
23 or institutions for the ward's care and maintenance.

24 (c) Nothing in subdivision (a)(3) of this section or in  
25 any other part of this section shall be construed to alter the  
26 decisionmaking authority of an attorney in fact designated and  
27 authorized under sections 30-3401 to 30-3432 to make health care

1 decisions pursuant to a power of attorney for health care.

2           Sec. 3. Section 30-2647, Revised Statutes Cumulative  
3 Supplement, 2012, is amended to read:

4           30-2647 Within thirty days after appointment, every  
5 conservator shall prepare and file with the appointing court a  
6 complete inventory of the estate of the protected person together  
7 with the conservator's oath or affirmation that the inventory  
8 is complete and accurate so far as he or she is informed. The  
9 conservator shall mail a copy thereof by first-class mail to the  
10 protected person, if the protected person can be located and has  
11 attained the age of fourteen years, and to all other interested  
12 persons as defined in section 30-2601. The conservator shall file  
13 with the court a certificate of mailing showing that copies were  
14 sent to all interested persons by first-class mail along with a  
15 form to send back to the court that indicates if such person  
16 wants to continue receiving notifications about the proceedings.  
17 Every conservator shall file an updated inventory with the annual  
18 accounting required under section 30-2648. The conservator shall  
19 keep suitable records of his or her administration and exhibit the  
20 same on request of any interested person.

21           Sec. 4. Original sections 30-2601, 30-2628, and 30-2647,  
22 Revised Statutes Cumulative Supplement, 2012, are repealed.

23           2. On page 1, line 2, strike "30-2628" and insert  
24 "30-2601, 30-2628,"; and in line 3 after the semicolon insert "to  
25 redefine a term;".