

AMENDMENTS TO LB72

Introduced by Schumacher, 22.

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

3           Section 1. Section 30-3880, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5           30-3880 (UTC 815) (a) A trustee, without authorization by the court,  
6 may exercise:

7           (1) powers conferred by the terms of the trust; and

8           (2) except as limited by the terms of the trust:

9           (A) all powers over the trust property which an unmarried competent  
10 owner has over individually owned property;

11           (B) any other powers appropriate to achieve the proper investment,  
12 management, and distribution of the trust property; and

13           (C) any other powers conferred by the Nebraska Uniform Trust Code.

14           (b) The exercise of a power is subject to the fiduciary duties  
15 prescribed by sections 30-3866 to 30-3882.

16           (c) After the death of the trustor occurring after the effective  
17 date of this act, a trustee of a revocable trust which has become  
18 irrevocable by reason of the death of the trustor shall not transfer  
19 trust property to a beneficiary described in section 77-2004 or 77-2005  
20 in relation to the trustor prior to satisfaction of all claims for  
21 medicaid reimbursement pursuant to section 68-919 to the extent necessary  
22 to discharge any such claim remaining unpaid after application of the  
23 assets of the trustor's probate estate. The Department of Health and  
24 Human Services may, upon application of a trustee, waive the restriction  
25 on transfers established by this subsection in cases in which the  
26 department determines that either there is no medicaid reimbursement due  
27 or after the proposed transfer is made there will be sufficient assets

1 remaining in the trust or trustor's probate estate to satisfy all such  
2 claims for medicaid reimbursement. If there is no medicaid reimbursement  
3 due, the department shall waive the restriction within sixty days after  
4 receipt of the trustee's request for waiver and the deceased trustor's  
5 name and social security number and, if available upon reasonable  
6 investigation, the name and social security number of the trustor's  
7 spouse if such spouse is deceased. A trustee who is either a financial  
8 institution as defined in section 77-3801 or an attorney licensed to  
9 practice in this state may distribute assets from the trust prior to the  
10 receipt of the waiver from the department if the trustee signs a recital  
11 under oath and mailed by certified mail to the department that states the  
12 decedent's name and social security number and, if available upon  
13 reasonable investigation, the name and social security number of the  
14 decedent's spouse if such spouse is deceased, and that the trustor was  
15 not a recipient of medical assistance and no claims for medical  
16 assistance exist under section 68-919. A trustee who makes such a recital  
17 knowing the recital is false becomes personally liable for medical  
18 assistance reimbursement pursuant to section 68-919 to the extent of the  
19 assets distributed from the trust necessary to discharge any such claim  
20 remaining unpaid after application of the assets of the transferor's  
21 probate estate.

22       Sec. 2. Section 30-3881, Reissue Revised Statutes of Nebraska, is  
23 amended to read:

24       30-3881 (UTC 816) (a) Without limiting the authority conferred by  
25 section 30-3880, a trustee may:

26       (1) collect trust property and accept or reject additions to the  
27 trust property from a settlor or any other person;

28       (2) acquire or sell property, for cash or on credit, at public or  
29 private sale;

30       (3) exchange, partition, or otherwise change the character of trust  
31 property;

1 (4) deposit trust money in an account in a regulated financial-  
2 service institution;

3 (5) borrow money, including from the trustee, with or without  
4 security, and mortgage or pledge trust property for a period within or  
5 extending beyond the duration of the trust;

6 (6) with respect to an interest in a proprietorship, partnership,  
7 limited liability company, business trust, corporation, or other form of  
8 business or enterprise, continue the business or other enterprise and  
9 take any action that may be taken by shareholders, members, or property  
10 owners, including merging, dissolving, or otherwise changing the form of  
11 business organization or contributing additional capital;

12 (7) with respect to stocks or other securities, exercise the rights  
13 of an absolute owner, including the right to:

14 (A) vote, or give proxies to vote, with or without power of  
15 substitution, or enter into or continue a voting trust agreement;

16 (B) hold a security in the name of a nominee or in other form  
17 without disclosure of the trust so that title may pass by delivery;

18 (C) pay calls, assessments, and other sums chargeable or accruing  
19 against the securities, and sell or exercise stock subscription or  
20 conversion rights; and

21 (D) deposit the securities with a depository or other regulated  
22 financial-service institution;

23 (8) with respect to an interest in real property, construct, or make  
24 ordinary or extraordinary repairs to, alterations to, or improvements in,  
25 buildings or other structures, demolish improvements, raze existing or  
26 erect new party walls or buildings, subdivide or develop land, dedicate  
27 land to public use or grant public or private easements, and make or  
28 vacate plats and adjust boundaries;

29 (9) enter into a lease for any purpose as lessor or lessee,  
30 including a lease or other arrangement for exploration and removal of  
31 natural resources, with or without the option to purchase or renew, for a

1 period within or extending beyond the duration of the trust;

2 (10) grant an option involving a sale, lease, or other disposition  
3 of trust property or acquire an option for the acquisition of property,  
4 including an option exercisable beyond the duration of the trust, and  
5 exercise an option so acquired;

6 (11) insure the property of the trust against damage or loss and  
7 insure the trustee, the trustee's agents, and beneficiaries against  
8 liability arising from the administration of the trust;

9 (12) abandon or decline to administer property of no value or of  
10 insufficient value to justify its collection or continued administration;

11 (13) with respect to possible liability for violation of  
12 environmental law:

13 (A) inspect or investigate property the trustee holds or has been  
14 asked to hold, or property owned or operated by an organization in which  
15 the trustee holds or has been asked to hold an interest, for the purpose  
16 of determining the application of environmental law with respect to the  
17 property;

18 (B) take action to prevent, abate, or otherwise remedy any actual or  
19 potential violation of any environmental law affecting property held  
20 directly or indirectly by the trustee, whether taken before or after the  
21 assertion of a claim or the initiation of governmental enforcement;

22 (C) decline to accept property into trust or disclaim any power with  
23 respect to property that is or may be burdened with liability for  
24 violation of environmental law;

25 (D) compromise claims against the trust which may be asserted for an  
26 alleged violation of environmental law; and

27 (E) pay the expense of any inspection, review, abatement, or  
28 remedial action to comply with environmental law;

29 (14) pay or contest any claim, settle a claim by or against the  
30 trust, and release, in whole or in part, a claim belonging to the trust;

31 (15) pay taxes, assessments, compensation of the trustee and of

1 employees and agents of the trust, and other expenses incurred in the  
2 administration of the trust;

3 (16) exercise elections with respect to federal, state, and local  
4 taxes;

5 (17) select a mode of payment under any employee benefit or  
6 retirement plan, annuity, or life insurance payable to the trustee,  
7 exercise rights thereunder, including exercise of the right to  
8 indemnification for expenses and against liabilities, and take  
9 appropriate action to collect the proceeds;

10 (18) make loans out of trust property, including loans to a  
11 beneficiary on terms and conditions the trustee considers to be fair and  
12 reasonable under the circumstances, and the trustee has a lien on future  
13 distributions for repayment of those loans;

14 (19) pledge trust property to guarantee loans made by others to the  
15 beneficiary;

16 (20) appoint a trustee to act in another jurisdiction with respect  
17 to trust property located in the other jurisdiction, confer upon the  
18 appointed trustee all of the powers and duties of the appointing trustee,  
19 require that the appointed trustee furnish security, and remove any  
20 trustee so appointed;

21 (21) pay an amount distributable to a beneficiary who is under a  
22 legal disability or who the trustee reasonably believes is incapacitated,  
23 by paying it directly to the beneficiary or applying it for the  
24 beneficiary's benefit, or by:

25 (A) paying it to the beneficiary's conservator or, if the  
26 beneficiary does not have a conservator, the beneficiary's guardian;

27 (B) paying it to the beneficiary's custodian under the Nebraska  
28 Uniform Transfers to Minors Act or custodial trustee under the Nebraska  
29 Uniform Custodial Trust Act, and, for that purpose, creating a  
30 custodianship or custodial trust;

31 (C) if the trustee does not know of a conservator, guardian,

1 custodian, or custodial trustee, paying it to an adult relative or other  
2 person having legal or physical care or custody of the beneficiary, to be  
3 expended on the beneficiary's behalf; or

4 (D) managing it as a separate fund on the beneficiary's behalf,  
5 subject to the beneficiary's continuing right to withdraw the  
6 distribution;

7 (22) on distribution of trust property or the division or  
8 termination of a trust, make distributions in divided or undivided  
9 interests, allocate particular assets in proportionate or  
10 disproportionate shares, value the trust property for those purposes, and  
11 adjust for resulting differences in valuation;

12 (23) resolve a dispute concerning the interpretation of the trust or  
13 its administration by mediation, arbitration, or other procedure for  
14 alternative dispute resolution;

15 (24) prosecute or defend an action, claim, or judicial proceeding in  
16 any jurisdiction to protect trust property and the trustee in the  
17 performance of the trustee's duties;

18 (25) sign and deliver contracts and other instruments that are  
19 useful to achieve or facilitate the exercise of the trustee's powers; and

20 (26) on termination of the trust, exercise the powers appropriate to  
21 wind up the administration of the trust and distribute the trust property  
22 to the persons entitled to it.

23 (b) After the death of the trustor occurring after the effective  
24 date of this act, a trustee of a revocable trust which has become  
25 irrevocable by reason of the death of the trustor shall not transfer  
26 trust property to a beneficiary described in section 77-2004 or 77-2005  
27 in relation to the trustor prior to satisfaction of all claims for  
28 medicaid reimbursement pursuant to section 68-919 to the extent necessary  
29 to discharge any such claim remaining unpaid after application of the  
30 assets of the trustor's probate estate. The Department of Health and  
31 Human Services may, upon application of a trustee, waive the restriction

1 on transfers established by this subsection in cases in which the  
2 department determines that either there is no medicaid reimbursement due  
3 or after the proposed transfer is made there will be sufficient assets  
4 remaining in the trust or trustor's probate estate to satisfy all such  
5 claims for medicaid reimbursement. If there is no medicaid reimbursement  
6 due, the department shall waive the restriction within sixty days after  
7 receipt of the trustee's request for waiver and the deceased trustor's  
8 name and social security number and, if available upon reasonable  
9 investigation, the name and social security number of the trustor's  
10 spouse if such spouse is deceased. A trustee who is either a financial  
11 institution as defined in section 77-3801 or an attorney licensed to  
12 practice in this state may distribute assets from the trust prior to the  
13 receipt of the waiver from the department if the trustee signs a recital  
14 under oath and mailed by certified mail to the department that states the  
15 decedent's name and social security number and, if available upon  
16 reasonable investigation, the name and social security number of the  
17 decedent's spouse if such spouse is deceased, and that the trustor was  
18 not a recipient of medical assistance and no claims for medical  
19 assistance exist under section 68-919. A trustee who makes such a recital  
20 knowing the recital is false becomes personally liable for medical  
21 assistance reimbursement pursuant to section 68-919 to the extent of the  
22 assets distributed from the trust necessary to discharge any such claim  
23 remaining unpaid after application of the assets of the transferor's  
24 probate estate.

25       Sec. 3. Section 30-3882, Reissue Revised Statutes of Nebraska, is  
26 amended to read:

27       30-3882 (UTC 817) (a) ~~Upon~~ Except as limited in subsection (d) of  
28 this section, upon termination or partial termination of a trust, the  
29 trustee may send to the beneficiaries a proposal for distribution. The  
30 right of any beneficiary to object to the proposed distribution  
31 terminates if the beneficiary does not notify the trustee of an objection

1 within thirty days after the proposal was sent but only if the proposal  
2 informed the beneficiary of the right to object and of the time allowed  
3 for objection.

4 (b) ~~Upon~~ Except as limited in subsection (d) of this section, upon  
5 the occurrence of an event terminating or partially terminating a trust,  
6 the trustee shall proceed expeditiously to distribute the trust property  
7 to the persons entitled to it, subject to the right of the trustee to  
8 retain a reasonable reserve for the payment of debts, expenses, and  
9 taxes.

10 (c) A release by a beneficiary of a trustee from liability for  
11 breach of trust is invalid to the extent:

12 (1) it was induced by improper conduct of the trustee; or

13 (2) the beneficiary, at the time of the release, did not know of the  
14 beneficiary's rights or of the material facts relating to the breach.

15 (d) After the death of the trustor occurring after the effective  
16 date of this act, a trustee of a revocable trust which has become  
17 irrevocable by reason of the death of the trustor shall not transfer  
18 trust property to a beneficiary described in section 77-2004 or 77-2005  
19 in relation to the trustor prior to satisfaction of all claims for  
20 medicaid reimbursement pursuant to section 68-919 to the extent necessary  
21 to discharge any such claim remaining unpaid after application of the  
22 assets of the trustor's probate estate. The Department of Health and  
23 Human Services may, upon application of a trustee, waive the restriction  
24 on transfers established by this subsection in cases in which the  
25 department determines that either there is no medicaid reimbursement due  
26 or after the proposed transfer is made there will be sufficient assets  
27 remaining in the trust or trustor's probate estate to satisfy all such  
28 claims for medicaid reimbursement. If there is no medicaid reimbursement  
29 due, the department shall waive the restriction within sixty days after  
30 receipt of the trustee's request for waiver and the deceased trustor's  
31 name and social security number and, if available upon reasonable



1 investigation, the name and social security number of the trustor's  
2 spouse if such spouse is deceased. A trustee who is either a financial  
3 institution as defined in section 77-3801 or an attorney licensed to  
4 practice in this state may distribute assets from the trust prior to the  
5 receipt of the waiver from the department if the trustee signs a recital  
6 under oath and mailed by certified mail to the department that states the  
7 decedent's name and social security number and, if available upon  
8 reasonable investigation, the name and social security number of the  
9 decedent's spouse if such spouse is deceased, and that the trustor was  
10 not a recipient of medical assistance and no claims for medical  
11 assistance exist under section 68-919. A trustee who makes such a recital  
12 knowing the recital is false becomes personally liable for medical  
13 assistance reimbursement pursuant to section 68-919 to the extent of the  
14 assets distributed from the trust necessary to discharge any such claim  
15 remaining unpaid after application of the assets of the transferor's  
16 probate estate.

17       Sec. 4. Section 68-919, Revised Statutes Cumulative Supplement,  
18 2014, is amended to read:

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

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

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

31       (2) The debt accruing under subsection (1) of this section arises

1 during the life of the recipient but shall be held in abeyance until the  
2 death of the recipient. Any such debt to the department that exists when  
3 the recipient dies shall be recovered only after the death of the  
4 recipient's spouse, if any, and only when the recipient is not survived  
5 by a child who either is under twenty-one years of age or is blind or  
6 totally and permanently disabled as defined by the Supplemental Security  
7 Income criteria.

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

12 (4) The debt may be recovered from the estate of a recipient of  
13 medical assistance, including any real property, personal property, or  
14 other asset in which the recipient had any legal title or interest at the  
15 time of the recipient's death, to the extent of such interests. In  
16 furtherance and not in limitation of the foregoing, for purposes of this  
17 section, the estate of the recipient of medical assistance also includes  
18 assets to be transferred to a beneficiary described in section 77-2004 or  
19 77-2005 in relation to the recipient through a revocable trust or other  
20 similar arrangement which has become irrevocable by reason of the  
21 recipient's death.

22 (5 4) In any probate proceedings in which the department has filed a  
23 claim under this section, no additional evidence of foundation shall be  
24 required for the admission of the department's payment record supporting  
25 its claim if the payment record bears the seal of the department, is  
26 certified as a true copy, and bears the signature of an authorized  
27 representative of the department.

28 (6 5) The department may waive or compromise its claim, in whole or  
29 in part, if the department determines that enforcement of the claim would  
30 not be in the best interests of the state or would result in undue  
31 hardship as provided in rules and regulations of the department.

1           Sec. 5. Section 77-2018.02, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3           77-2018.02 (1) In the absence of any proceeding brought under  
4 Chapter 30, article 24 or 25, in this state, proceedings for the  
5 determination of the tax may be instituted in the county court of the  
6 county where the property or any part thereof which might be subject to  
7 tax is situated.

8           (2) Upon the filing of the petition referred to in subsection (1) of  
9 this section, the county court shall order the petition set for hearing,  
10 not less than two nor more than four weeks after the date of filing the  
11 petition, and shall cause notice thereof to be given to all persons  
12 interested in the estate of the deceased and the property described in  
13 the petition, except as provided in subsections (4) and (5) of this  
14 section, in the manner provided for in subsection (3) of this section.

15           (3) The notice, provided for by subsection (2) of this section,  
16 shall be given by one publication in a legal newspaper of the county or,  
17 in the absence of such legal newspaper, then in a legal newspaper of some  
18 adjoining county of general circulation in the county. In addition to  
19 such publication of notice, personal service of notice of the said  
20 hearing shall be had upon the county attorney of each county in which the  
21 property described in the petition is located, at least one week prior to  
22 the hearing.

23           (4) If it appears to the county court, upon the filing of the  
24 petition, by any person other than the county attorney, that no  
25 assessment of inheritance tax could result, it shall forthwith enter  
26 thereon an order directing the county attorney to show cause, within one  
27 week from the service thereof, why determination should not be made that  
28 no inheritance tax is due on account of the property described in the  
29 petition and the potential lien thereof on such property extinguished.  
30 Upon service of such order to show cause and failure of such showing by  
31 the county attorney, notice of such hearing by publication shall be

1 dispensed with, and the petitioner shall be entitled without delay to a  
2 determination of no tax due on account of the property described in the  
3 petition, and any potential lien shall be extinguished.

4 (5) If it appears ~~shall appear~~ to the county court that (a) the  
5 county attorney of each county in which the property described in the  
6 petition is located has executed a waiver of notice upon him or her to  
7 show cause, or of the time and place of hearing, and has entered a  
8 voluntary appearance in such proceeding in behalf of the county and the  
9 State of Nebraska, and (b) either (i) all persons against whom an  
10 inheritance tax may be assessed are either a petitioner or have executed  
11 a waiver of notice upon them to show cause, or of the time and place of  
12 hearing, and have entered a voluntary appearance, or (ii) a party to the  
13 proceeding has agreed to pay to the proper counties the full inheritance  
14 tax so determined, the court may dispense with the notice provided for in  
15 subsections (2) and (3) of this section and proceed without delay to make  
16 a determination of inheritance tax, if any, due on account of the  
17 property described in the petition.

18 (6) If the decedent was fifty-five years of age or older or resided  
19 in a medical institution as defined in subsection (1) of section 68-919,  
20 a notice of the filing of the petition referred to in subsection (1) of  
21 this section shall be mailed to the Department of Health and Human  
22 Services with the decedent's social security number and, if available  
23 upon reasonable investigation, the name and social security number of the  
24 decedent's spouse if such spouse is deceased. A certificate of the  
25 mailing of the notice to the department shall be filed in the inheritance  
26 tax proceedings by an attorney for the petitioner or, if there is no  
27 attorney, by the petitioner, prior to the entry of an order pursuant to  
28 this section.

29 Sec. 6. 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. 7.       Original sections 30-3880, 30-3881, 30-3882, and  
2   77-2018.02, Reissue Revised Statutes of Nebraska, and section 68-919,  
3   Revised Statutes Cumulative Supplement, 2014, are repealed.