

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 72

Introduced by Schumacher, 22.

Read first time January 08, 2015

Committee: Judiciary

1 A BILL FOR AN ACT relating to medicaid; to amend sections 30-3880,
2 30-3881, 30-3882, and 77-2018.02, Reissue Revised Statutes of
3 Nebraska, and section 68-901, Revised Statutes Cumulative
4 Supplement, 2014; to change provisions relating to the powers of
5 trustees; to provide a lien for medicaid reimbursement as
6 prescribed; to require a notice of inheritance tax petitions; to
7 harmonize provisions; to provide severability; and to repeal the
8 original sections.
9 Be it enacted by the people of the State of Nebraska,

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

3 30-3880 (UTC 815) (a) A trustee, without authorization by the court,
4 may exercise:

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

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

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

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

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

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

14 (c) After the death of the trustor occurring after the effective
15 date of this act, a trustee of a revocable trust which has become
16 irrevocable by reason of the death of the trustor shall not transfer
17 trust property to a beneficiary described in section 77-2004 or 77-2005
18 in relation to the trustor prior to satisfaction of all claims for
19 medicaid reimbursement pursuant to section 68-919 to the extent necessary
20 to discharge any such claim remaining unpaid after application of the
21 assets of the trustor's probate estate and the release of all liens
22 created by section 5 of this act on real estate transferred by the
23 trustor. The Department of Health and Human Services may, upon
24 application of a trustee, waive the restriction on transfers established
25 by this subsection in cases in which the department determines there
26 either is no medicaid reimbursement due or after the proposed transfer is
27 made there will be sufficient assets remaining in the trust or trustor's
28 probate estate to satisfy all such claims for medicaid reimbursement.

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

31 30-3881 (UTC 816) (a) Without limiting the authority conferred by

1 section 30-3880, a trustee may:

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

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

6 (3) exchange, partition, or otherwise change the character of trust
7 property;

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

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

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

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

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

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

25 (C) pay calls, assessments, and other sums chargeable or accruing
26 against the securities, and sell or exercise stock subscription or
27 conversion rights; and

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

30 (8) with respect to an interest in real property, construct, or make
31 ordinary or extraordinary repairs to, alterations to, or improvements in,

1 buildings or other structures, demolish improvements, raze existing or
2 erect new party walls or buildings, subdivide or develop land, dedicate
3 land to public use or grant public or private easements, and make or
4 vacate plats and adjust boundaries;

5 (9) enter into a lease for any purpose as lessor or lessee,
6 including a lease or other arrangement for exploration and removal of
7 natural resources, with or without the option to purchase or renew, for a
8 period within or extending beyond the duration of the trust;

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

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

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

18 (13) with respect to possible liability for violation of
19 environmental law:

20 (A) inspect or investigate property the trustee holds or has been
21 asked to hold, or property owned or operated by an organization in which
22 the trustee holds or has been asked to hold an interest, for the purpose
23 of determining the application of environmental law with respect to the
24 property;

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

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

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

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

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

7 (15) pay taxes, assessments, compensation of the trustee and of
8 employees and agents of the trust, and other expenses incurred in the
9 administration of the trust;

10 (16) exercise elections with respect to federal, state, and local
11 taxes;

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

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

21 (19) pledge trust property to guarantee loans made by others to the
22 beneficiary;

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

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

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

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

7 (C) if the trustee does not know of a conservator, guardian,
8 custodian, or custodial trustee, paying it to an adult relative or other
9 person having legal or physical care or custody of the beneficiary, to be
10 expended on the beneficiary's behalf; or

11 (D) managing it as a separate fund on the beneficiary's behalf,
12 subject to the beneficiary's continuing right to withdraw the
13 distribution;

14 (22) on distribution of trust property or the division or
15 termination of a trust, make distributions in divided or undivided
16 interests, allocate particular assets in proportionate or
17 disproportionate shares, value the trust property for those purposes, and
18 adjust for resulting differences in valuation;

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

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

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

27 (26) on termination of the trust, exercise the powers appropriate to
28 wind up the administration of the trust and distribute the trust property
29 to the persons entitled to it.

30 (b) After the death of the trustor occurring after the effective
31 date of this act, a trustee of a revocable trust which has become

1 irrevocable by reason of the death of the trustor shall not transfer
2 trust property to a beneficiary described in section 77-2004 or 77-2005
3 in relation to the trustor prior to satisfaction of all claims for
4 medicaid reimbursement pursuant to section 68-919 to the extent necessary
5 to discharge any such claim remaining unpaid after application of the
6 assets of the trustor's probate estate and the release of all liens
7 created by section 5 of this act on real estate transferred by the
8 trustor. The Department of Health and Human Services may, upon
9 application of a trustee, waive the restriction on transfers established
10 by this subsection in cases in which the department determines there
11 either is no medicaid reimbursement due or after the proposed transfer is
12 made there will be sufficient assets remaining in the trust or trustor's
13 probate estate to satisfy all such claims for medicaid reimbursement.

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

16 30-3882 (UTC 817) (a) ~~Upon~~ Except as limited in subsection (d) of
17 this section, upon termination or partial termination of a trust, the
18 trustee may send to the beneficiaries a proposal for distribution. The
19 right of any beneficiary to object to the proposed distribution
20 terminates if the beneficiary does not notify the trustee of an objection
21 within thirty days after the proposal was sent but only if the proposal
22 informed the beneficiary of the right to object and of the time allowed
23 for objection.

24 (b) ~~Upon~~ Except as limited in subsection (d) of this section, upon
25 the occurrence of an event terminating or partially terminating a trust,
26 the trustee shall proceed expeditiously to distribute the trust property
27 to the persons entitled to it, subject to the right of the trustee to
28 retain a reasonable reserve for the payment of debts, expenses, and
29 taxes.

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

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

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

4 (d) After the death of the trustor occurring after the effective
5 date of this act, a trustee of a revocable trust which has become
6 irrevocable by reason of the death of the trustor shall not transfer
7 trust property to a beneficiary described in section 77-2004 or 77-2005
8 in relation to the trustor prior to satisfaction of all claims for
9 medicaid reimbursement pursuant to section 68-919 to the extent necessary
10 to discharge any such claim remaining unpaid after application of the
11 assets of the trustor's probate estate and the release of all liens
12 created by section 5 of this act on real estate transferred by the
13 trustor. The Department of Health and Human Services may, upon
14 application of a trustee, waive the restriction on transfers established
15 by this subsection in cases in which the department determines there
16 either is no medicaid reimbursement due or after the proposed transfer is
17 made there will be sufficient assets remaining in the trust or trustor's
18 probate estate to satisfy all such claims for medicaid reimbursement.

19 Sec. 4. Section 68-901, Revised Statutes Cumulative Supplement,
20 2014, is amended to read:

21 68-901 Sections 68-901 to 68-974 and section 5 of this act shall be
22 known and may be cited as the Medical Assistance Act.

23 Sec. 5. (1) When an interest in real estate is transferred for less
24 than full consideration or the real estate transferred is subject to
25 rights, possession, or powers retained by the transferor, the
26 transferee's interest in the real estate acquired at the time of the
27 transfer shall become subject to a lien in favor of the State of
28 Nebraska for medicaid reimbursement pursuant to section 68-919 to the
29 extent necessary to discharge any such claim remaining unpaid after
30 application of the assets of the transferor's probate estate. The lien
31 applies to medical assistance provided before, at the same time as, or

1 after the transfer.

2 (2) For purposes of this section, transferee means:

3 (a) An individual listed in section 77-2004 or 77-2005 in relation
4 to the transferor;

5 (b) A business organization controlled by one or more individuals
6 listed in subdivision (2)(a) of this section. Control means individuals
7 listed in subdivision (2)(a) of this section together own or have the
8 option to acquire fifty percent or more of the business organization; or

9 (c) A nonrevocable trust in which an individual listed in
10 subdivision (2)(a) of this section is a beneficiary.

11 (3) The lien shall be limited to the amount necessary to discharge
12 any such claim remaining unpaid after application of any assets from the
13 transferor's estate less any consideration paid to the transferor at the
14 time of the transfer adjusted to the current value of such consideration
15 as reflected by the Consumer Price Index for Urban Wage Earners and
16 Clerical Workers. The burden of proof of consideration paid rests with
17 the transferee or the transferee's successor in interest.

18 (4) The lien shall not attach to an interest in real estate for
19 which the deed or instrument creating such interest contains a recital
20 made under the oath of the grantor that the grantee is not a transferee
21 within the meaning of this section or for which an affidavit of the
22 grantor containing such recital is recorded contemporaneously with the
23 deed or instrument. A grantee who is a transferee who takes possession or
24 otherwise enjoys the benefits of the transfer knowing the recital is
25 false becomes personally liable for medicaid reimbursement pursuant to
26 section 68-919 to the extent necessary to discharge any such claim
27 remaining unpaid after application of the assets of the transferor's
28 probate estate.

29 (5) The Department of Health and Human Services may discharge the
30 lien upon application by the transferee in which the transferee agrees to
31 indemnify the department for medicaid reimbursement pursuant to section

1 68-919 to the extent necessary to discharge any such claim remaining
2 unpaid after application of the assets of the transferor's probate
3 estate, but not to exceed the amount of the lien as determined pursuant
4 to subsection (3) of this section. The department may require the
5 application to be accompanied by good and sufficient sureties or other
6 evidence determined by the department to be sufficient to secure the
7 liability agreed to by the transferee.

8 (6) Any indemnity shall be released and any lien shall be discharged
9 upon (a) notice delivered to the department, by certified mail with a
10 return receipt, of (i) the death and identification of the transferor,
11 (ii) the legal description of the real estate subject to the indemnity or
12 lien, and (iii) the names and addresses of the owners of record of the
13 real estate and (b) the department either (i) filing a release in
14 the real estate records of the county in which the real estate is located
15 or (ii) failing to file an action to foreclose the lien or collect on the
16 indemnity within one year after delivery of the notice or within such
17 other time period as may be agreed to by the department.

18 Sec. 6. Section 77-2018.02, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 77-2018.02 (1) In the absence of any proceeding brought under
21 Chapter 30, article 24 or 25, in this state, proceedings for the
22 determination of the tax may be instituted in the county court of the
23 county where the property or any part thereof which might be subject to
24 tax is situated.

25 (2) Upon the filing of the petition referred to in subsection (1) of
26 this section, the county court shall order the petition set for hearing,
27 not less than two nor more than four weeks after the date of filing the
28 petition, and shall cause notice thereof to be given to all persons
29 interested in the estate of the deceased and the property described in
30 the petition, except as provided in subsections (4) and (5) of this
31 section, in the manner provided for in subsection (3) of this section.

1 (3) The notice, provided for by subsection (2) of this section,
2 shall be given by one publication in a legal newspaper of the county or,
3 in the absence of such legal newspaper, then in a legal newspaper of some
4 adjoining county of general circulation in the county. In addition to
5 such publication of notice, personal service of notice of the said
6 hearing shall be had upon the county attorney of each county in which the
7 property described in the petition is located, at least one week prior to
8 the hearing. If the decedent was fifty-five years of age or older or
9 resided in a medical institution as defined in subsection (1) of section
10 68-919, the notice shall also be mailed to the Department of Health and
11 Human Services with the decedent's social security number and, if
12 available upon reasonable investigation, the name and social security
13 number of the decedent's spouse if such spouse is deceased.

14 (4) If it appears to the county court, upon the filing of the
15 petition, by any person other than the county attorney, that no
16 assessment of inheritance tax could result, it shall forthwith enter
17 thereon an order directing the county attorney to show cause, within one
18 week from the service thereof, why determination should not be made that
19 no inheritance tax is due on account of the property described in the
20 petition and the potential lien thereof on such property extinguished.
21 Upon service of such order to show cause and failure of such showing by
22 the county attorney, notice of such hearing by publication shall be
23 dispensed with, and the petitioner shall be entitled without delay to a
24 determination of no tax due on account of the property described in the
25 petition, and any potential lien shall be extinguished.

26 (5) If it shall appear to the county court that (a) the county
27 attorney of each county in which the property described in the petition
28 is located has executed a waiver of notice upon him to show cause, or of
29 the time and place of hearing, and has entered a voluntary appearance in
30 such proceeding in behalf of the county and the State of Nebraska, and
31 (b) either (i) all persons against whom an inheritance tax may be

1 assessed are either a petitioner or have executed a waiver of notice upon
2 them to show cause, or of the time and place of hearing, and have entered
3 a voluntary appearance, or (ii) a party to the proceeding has agreed to
4 pay to the proper counties the full inheritance tax so determined, the
5 court may dispense with the notice provided for in subsections (2) and
6 (3) of this section and proceed without delay to make a determination of
7 inheritance tax, if any, due on account of the property described in the
8 petition.

9 Sec. 7. If any section in this act or any part of any section is
10 declared invalid or unconstitutional, the declaration shall not affect
11 the validity or constitutionality of the remaining portions.

12 Sec. 8. Original sections 30-3880, 30-3881, 30-3882, and
13 77-2018.02, Reissue Revised Statutes of Nebraska, and section 68-901,
14 Revised Statutes Cumulative Supplement, 2014, are repealed.