

LEGISLATIVE BILL 481

Approved by the Governor April 28, 1975

Introduced by Judiciary Committee, Luedtke, 28, Chmn.;
DeCamp, 40; Schmit, 23; Barnett, 26; Anderson,
37; Nichol, 48

AN ACT relating to probate proceedings; to harmonize provisions with the Nebraska Probate Code; to change county court fees for probate proceedings and other matters as prescribed; to amend sections 8-201, 8-317, 16-634, 21-20, 105, 25-207, 25-308, 25-309, 25-819, 30-1601, 30-1610, 31-415, 31-822, 33-125, 33-126.02, 33-126.03, 33-126.04, 33-126.05, 42-105, 42-341, 49-801, 77-2004, 77-2018.01, and 77-2018.02, Reissue Revised Statutes of Nebraska, 1943, sections 24-536, 24-554, 24-559, 24-601, 30-1603, 30-2487, 30-2499, and 30-2622, Revised Statutes Supplement, 1974, and section 25-307, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 480, Eighty-fourth Legislature, First Session, 1975; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 8-201, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-201. The Director of Banking shall have the power to issue to trust companies, charters of authority to transact trust company business as defined in sections 8-201 to 8-226. It shall have general supervision and control over such trust companies. Any three or more persons may adopt articles of incorporation and become a body corporate for the purpose of engaging in and conducting the business of a trust company, upon complying with the requirements of sections 8-201 to 8-226 and the general laws of this state relating to the organization of corporations and upon obtaining a charter to transact business as a trust company from the Department of Banking.

Every corporation organized for and desiring to transact a trust company business shall, before commencing such business, make under oath and transmit to the Department of Banking a complete statement including

(1) the name of the proposed trust company; (2) a certified copy of the articles of incorporation; (3) the names of the stockholders; (4) the name of the county, city, or village in which said trust company is located; (5) the amount of paid-up capital stock; and (6) a statement, under the oath of the president and secretary, that the capital stock has been paid in as provided for and it shall also pay the fee prescribed by section 8-602 for investigation of such statement. If, upon investigation, the department shall be satisfied that the parties requesting said charter are parties of integrity and responsibility and that the public necessity, convenience, and advantage will be promoted by permitting such proposed trust company to engage in business, the department shall issue to said corporation a charter entitling it to transact the business provided for in said sections. Upon payment of the required fees and upon the receipt of the charter, the proposed trust company may begin to transact a trust company business. It shall be unlawful for any corporation, except a foreign corporate trustee to the extent authorized under section 30-2805, to engage in business as a trust company or to act in a fiduciary capacity unless it shall have first obtained from the Department of Banking a charter of authority to do business.

Sec. 2. That section 8-317, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-317. Certificates of stock shall be issued to every member for the number of shares owned by him, in conformity with sections 8-301 to 8-345 and the constitution and by-laws. ~~Whenever any such certificates are made to the joint account of two or more persons; the shares represented thereby shall be payable to any one of them or to the survivor or to any one of the survivors of them;~~ Every stockholder shall receive credit on the books of the association for all amounts paid by him upon his subscription for stock, together with his pro rata share of all dividends declared, as hereinafter provided, and when the sum of such payments and dividends, less all fines or other charges, shall equal the par value of the shares of stock held by him, he shall be entitled to receive such par value, with such interest not exceeding the legal rate, as the directors may determine, from the time of maturity until paid. Holders of stock thus matured and members desiring to withdraw before such maturity, shall be paid the value of their stock in the order of the maturity of or notice of withdrawal of such stock. At no time shall more than two-thirds of the unloaned funds in the treasury of the association, inclusive of such funds applicable to the demands of

withdrawing stockholders, as hereinbefore provided, be applicable to the demands of holders of matured stock without the consent of the board of directors.

Sec. 3. That section 16-634, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

16-634. If, in any city of the first class, there shall be any real estate of any minor or insane protected person, the guardian or conservator of such minor or insane protected person may sign any petition herein referred to, ~~without authority~~, and such signature shall have like force and effect as that of other owners.

Sec. 4. That section 21-20,105, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

21-20,105. No foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the Secretary of State. No foreign corporation shall be entitled to procure a certificate of authority under sections 21-2001 to 21-20,134 to transact in this state any business which a corporation organized under sections 21-2001 to 21-20,134 is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or county under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in sections 21-2001 to 21-20,134 contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

Without excluding activities which do not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purpose of being required to secure a certificate of authority pursuant to this section, by reason of carrying on in this state any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;
- (5) Effecting sales through independent contractors;
- (6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts;
- (7) Creating or acquiring evidences of debt, mortgages or liens on real or personal property;
- (8) Securing, collecting, or servicing debts or enforcing any rights in property securing the same;
- (9) Transacting any business in interstate commerce; and
- (10) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature; and
- (11) Acting as a foreign corporate trustee to the extent authorized under section 30-2805.

The specification of activities which do not constitute transacting business for purposes of sections 21-2001 to 21-20,134 shall establish a standard for those activities in determining whether a foreign corporation is exercising its franchise or doing business in this state in a corporate capacity except for activities which may subject a corporation to service of process or to ad valorem taxes assessed against any real property or interest therein.

The requirements of sections 21-2001 to 21-20,134 shall not be applicable to foreign or alien insurers which are subject to the requirements of Chapter 44.

Sec. 5. That section 24-536, Revised Statutes Supplement, 1974, be amended to read as follows:

24-536. Either party to any case in county or municipal court, except criminal cases arising under city or village ordinances and traffic infractions, and except any matter arising under the provisions of the Nebraska Probate Code, may demand a trial by jury. In civil

cases, the demand must be in writing and must be filed on or before answer day. All provisions of law relating to juries in the district courts shall apply to juries in the county and municipal courts and the district court jury list shall be used, except that juries in the county and municipal courts shall consist of six persons.

Sec. 6. That section 24-554, Revised Statutes Supplement, 1974, be amended to read as follows:

24-554. The probate books shall consist of a probate record, a fee book, a general index to probate records, and an index to wills deposited, and such additional records as are needed to carry out the provisions of the Nebraska Probate Code.

Sec. 7. That section 24-559, Revised Statutes Supplement, 1974, be amended to read as follows:

24-559. In any proceeding in the county court involving (1) the probate of wills, ~~under the provisions of Chapter 30, article 2,~~ (2) the administration of estates, ~~under the provisions of Chapter 30, article 3,~~ (3) the determination of heirs, ~~under the provisions of Chapter 30, article 4,~~ (4) the determination of inheritance tax, ~~under the provisions of Chapter 77, article 2,~~ (5) guardianships, ~~under the provisions of Chapter 38, article 1, 2, 3, or 4,~~ or (6) conservatorships, ~~under the provisions of Chapter 38, article 9,~~ where real estate is any part of the assets of the estate or proceeding, the county judge before whom the proceeding is pending shall issue a certificate which shall be filed with the register of deeds of the county in which the real estate is located within ten days after the description of the real estate is filed in the proceeding. The certificate shall be in the following form:

This is to certify that there is pending in the county court of County, a proceeding
.....
(describe proceeding and name of person involved)
in which the following described real estate is involved, to wit:
.....
(describe real estate)
.....
County Judge

When a final decree is entered affecting the title to any real estate described in such certificate, the county judge shall issue a certificate which shall be filed with the register of deeds within ten days showing

the names of each person acquiring an interest in such real estate by such decree, and describing the interest acquired by each person.

Sec. 8. That section 24-601, Revised Statutes Supplement, 1974, be amended to read as follows:

24-601. Except as may be otherwise provided in section 8-318, or otherwise provided by law or by the instrument creating the fiduciary relationship involved, each and every trustee, guardian, conservator, executor or administrator, whether appointed by the courts of this state, or acting under authority other than a court appointment, having funds for investment shall invest the same in investments of the nature which men of prudence, discretion, and intelligence acquire or retain for--~~their own account in the management of their own affairs; not in regard to speculation; but in making investment of their own funds with a view to probable income as well as probable safety of the capital involved in dealing with the property of another, and if the trustee, guardian, conservator, executor, or administrator has special skills or is named as fiduciary on the basis of representations of special skills or expertise, he is under a duty to use those skills.~~

Sec. 9. That section 25-207, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-207. The following actions can only be brought within four years: (1) An action for trespass upon real property; (2) an action for taking, detaining or injuring personal property, including actions for the specific recovery of personal property; (3) an action for an injury to the rights of the plaintiff, not arising on contract, and not hereinafter enumerated; and (4) an action for relief on the ground of fraud, but the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud, except as provided in sections 30-2206 and 76-288 to 76-298.

Sec. 10. That section 25-307, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 480, Eighty-fourth Legislature, First Session, 1975, be amended to read as follows:

25-307. The Except as provided by the Nebraska Probate Code, the action of an infant shall be commenced, maintained, and prosecuted by his guardian or next friend. Such actions may be dismissed with or without prejudice by the guardian or next friend only with approval of the court. When the action is commenced by

his next friend, the court has power to dismiss it, if it is not for the benefit of the infant; or to substitute the guardian of the infant, or any person, as the next friend. Any action taken pursuant to this section shall be binding upon the infant.

Sec. 11. That section 25-308, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-308. The guardian, conservator, or the next friend is liable for the costs of the action brought by him, and, when he is insolvent, the court may require security for them. Either The guardian, conservator, or next friend may be a witness in an action brought by him.

Sec. 12. That section 25-309, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-309. The Except as provided by the Nebraska Probate Code, the defense of an infant must be by a guardian for the suit, who may be appointed by the court in which the action is prosecuted, or by a judge thereof, or by a county judge. The appointment cannot be made until after service of the summons in the action as directed by this code.

Sec. 13. That section 25-819, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-819. The A guardian ad litem of an infant--or person of unsound mind--or--attorney--for--a--person--in prison, shall deny in the answer all material allegations of the petition prejudicial to such defendant.

Sec. 14. That section 30-1601, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-1601. In all matters of probate--jurisdiction arising under the Nebraska Probate Code, appeals shall be allowed from any final order, judgment or decree of the county court to the district court by any person against whom any such order, judgment or decree may be made or who may be affected thereby.

Sec. 15. That section 30-1603, Revised Statutes Supplement, 1974, be amended to read as follows:

30-1603. Every party so appealing shall give bond in such sum as the court shall direct, with two or

more good and sufficient sureties, or with a corporate surety bond, to be approved by the court, conditioned that the appellant will prosecute such appeal to effect without unnecessary delay, and pay all debts, damages and costs that may be adjudged against him. The bond shall be filed within thirty days from the rendition of such decision. But an executor, administrator, personal representative, conservator, trustee, guardian, or guardian ad litem shall not be required to enter into bond in order to enable him to perfect an appeal. If it shall appear to the court that such an appeal was taken vexatiously or for delay, the court shall adjudge that the appellant shall pay the cost thereof, including an attorney's fee, to the adverse party, the court to fix the amount thereof; and such bond shall be liable therefor in cases where it is required.

Sec. 16. That section 30-1610, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-1610. When an executor, or administrator, personal representative, conservator, trustee, guardian, or guardian ad litem declines to appeal, any person interested in the estate as creditor, devisee, legatee, beneficiary, ward, protected person, or heir may appeal from such decision by filing a written application therefor; and the same proceedings shall be had in the name of the executor or administrator as if the appeal had been taken by him; Provided, the person appealing in such case shall give bond, to be approved by the county judge of probate and filed in his office court, as well to secure the estate from damages and costs, as to secure the intervening damages and costs to the adverse party; and actions upon such bonds may be maintained by the party sustaining damages thereby.

Sec. 17. That section 30-2487, Revised Statutes Supplement, 1974, be amended to read as follows:

30-2487. (a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) costs and expenses of administration;

(2) reasonable funeral expenses;

(3) (2) debts and taxes with preference under federal law;

(3) reasonable funeral expenses;

(4) reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;

(5) debts and taxes with preference under other laws of this state;

(6) all other claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

Sec. 18. That section 30-2499, Revised Statutes Supplement, 1974, be amended to read as follows:

30-2499. In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent, ~~as provided in section 30-2426 or by final judgment of any court of competent jurisdiction.~~ Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

Sec. 19. That section 30-2622, Revised Statutes Supplement, 1974, be amended to read as follows:

30-2622. The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in section 30-2623. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

Sec. 20. That section 31-415, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

31-415. The drainage district shall have power to purchase such real estate or easement therein as it may need and if it cannot agree on the purchase price of any needed real estate or easement therein, it shall have power to condemn the same whether the property be within the limits of such district or outside its boundaries. The exercise of the right of eminent domain on areas outside the boundaries of the district shall be limited only to those projects which have been approved by the Nebraska Natural Resources Commission; Provided, that this limitation shall not apply to any drainage district subject to the supervision of the United States Army Corps of Engineers. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. Whenever such drainage district shall find it expedient or necessary for the maintenance of any part of its improvement already constructed to add thereto further construction in the nature of a settling basin into which waters will be permitted to flow for the purpose of dropping silt before finding their outlet into any part of the main or lateral ditches of such drainage district improvement, such drainage district, if not able to agree with the landowner on the yearly cash rental of any premises taken and used for such purpose, shall have the right to condemn for the purpose of fixing the yearly rental for the land so taken. Whenever such drainage district shall take or damage any real estate, as aforesaid, of any minor or insane protected person, the guardian or conservator of such minor or insane protected person may agree and settle with the drainage district for all damages or claims by reason of taking such real estate or easement, and may give valid releases and discharges therefor.

Sec. 21. That section 31-822, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

31-822. The watershed district shall have power to purchase such real estate or easement in or upon real estate in the district as it may need, or which may be needed by any federal or state agency which plans to construct a work or works of improvement within the district for any of the purposes described in section 31-801, and if it cannot agree on the purchase price of any such real estate or easement therein, it shall have power to condemn the same. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. Whenever such watershed district shall find it expedient or necessary for the maintenance of any part of its improvement already constructed to add thereto further construction in the nature of a settling basin or conservation lakes, such

watershed district, if not able to agree with the landowner on the yearly cash rental of any premises taken and used for such purpose, shall have the right to condemn for the purpose of fixing the yearly rental for the land so taken. Whenever such watershed district shall take or damage any real estate, as aforesaid, of any minor or insane protected person, the guardian or conservator of such minor or insane protected person may agree and settle with the watershed district for all damages or claims by reason of taking such real estate or easement, and may give valid releases and discharges therefor.

Sec. 22. That section 33-125, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

33-125. In probate matters the county judge court shall be entitled to receive the following fees: (1) For (a) the informal probate of a will or informal appointment of a personal representative, or both, or (b) the determination of intestacy and heirs, without requesting the appointment of an administrator, or (c) summary proceedings in small estates under sections 30-24, 127 and 30-24, 128, or (d) adjudication of a contested claim, or (e) any other proceeding under the Nebraska Probate Code for which no court fee is established by statute, ten dollars; and (2) For for all proceedings relating to the formal settlement of the estate of a deceased person where the value does not exceed one thousand dollars, ten dollars; where the value exceeds one thousand dollars and is not more than two thousand dollars, fifteen dollars; where the value exceeds two thousand dollars and is not more than five thousand dollars, twenty-five dollars; where the value exceeds five thousand dollars and is not more than ten thousand dollars, thirty-five dollars; where the value exceeds ten thousand dollars and is not more than twenty-five thousand dollars, forty dollars; where the value exceeds twenty-five thousand dollars and is not more than fifty thousand dollars, fifty dollars; where the value exceeds fifty thousand dollars and is not more than seventy-five thousand dollars, sixty dollars; where the value exceeds seventy-five thousand dollars and is not more than one hundred thousand dollars, eighty dollars; where the value exceeds one hundred thousand dollars and is not more than one hundred and twenty-five thousand dollars, one hundred and ten dollars; where the value exceeds one hundred and twenty-five thousand dollars and is not more than one hundred and fifty thousand dollars, one hundred and twenty-five dollars; where the value exceeds one hundred and fifty thousand dollars and is not more than one hundred and seventy-five

thousand dollars, one hundred and thirty-five dollars; where the value exceeds one hundred and seventy-five thousand dollars and is not more than two hundred thousand dollars, one hundred and fifty dollars; where the value exceeds two hundred thousand dollars and is not more than three hundred thousand dollars, one hundred and seventy-five dollars; where the value exceeds three hundred thousand dollars and is not more than four hundred thousand dollars, two hundred dollars; where the value exceeds four hundred thousand dollars and is not more than five hundred thousand dollars, two hundred and fifty dollars; where the value exceeds five hundred thousand dollars and is not more than seven hundred and fifty thousand dollars, three hundred dollars; where the value exceeds seven hundred and fifty thousand dollars and is not more than one million dollars, three hundred and fifty dollars; and on all estates where the value exceeds one million dollars, four hundred dollars.

The above fees shall be based on the gross value of the estate, including both real and personal property. The gross value shall mean the actual value of the estate less liens, and shall be determined as of the time of the death. Such fees shall be in full for any and all services to be performed by the judge court in the settlement of an estate wherein no contest arises, and no additional fees shall be charged for services performed in connection with petitions, hearing, and orders for ~~licenses to sell or mortgage the assets of the estates of deceased persons in the course of such administration.~~ The same shall include one certified copy of the ~~letters testamentary or letters of administration, as the case may require, one certified copy of the decree on final account, of heirship, or assigning and distributing the estate, made for record in the office of the county clerk or register of deeds, and one copy of the will and probate thereof~~ each order or instrument made for record in the office of the county clerk or register of deeds. In other cases where it shall be necessary to copy instruments, the county judge court shall be allowed the fees provided in section 33-126.05. There shall be credited against the fees specified in subdivision (2) of this section any fees previously paid for probate matters relating to the estate of such deceased person. In all estates in which it becomes necessary to reappoint an executor, or administrator, or personal representative after his discharge authority to act terminates or appoint an ~~administrator de bonis non~~ or a special administrator, ten dollars shall be allowed for making such appointment. ~~For an estate settled under the provisions of sections 30-222, 30-334, or 30-4704 to 30-4708, ten dollars.~~ In all cases where a petition for probate of will, appointment of an administrator, special

administrator, personal representative, guardian, or trustee, or any other petition for ~~a decree~~ an order in probate matters is filed and no appointment is made or decree order entered and said cause is dismissed, the fee shall be five dollars. In formal proceedings pursuant to the provisions of Chapter 30, article 25, the fees provided under this section shall be based upon the value of all property present in Nebraska at the time of death. No fee shall be charged for filings in probate matters in the absence of a request for a court order or other court proceedings thereon.

Sec. 23. That section 33-126.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

33-126.02. In matters of guardianship and conservatorship, the county judge court shall be entitled to receive the following fees: Where Upon the filing of a petition for the appointment of a guardian, ten dollars; upon the filing of a petition for the appointment of a conservator where the gross value of the guardianship-or conservatorship estate does not exceed five thousand dollars, ten dollars; where the gross value thereof exceeds five thousand dollars, twenty-five dollars; for the appointment of a successor guardian or conservator, ten dollars; for the appointment of a special temporary guardian, or conservator, ten dollars; for proceedings for a protective order in the absence of a guardianship or conservatorship, ten dollars; for closing guardianship or conservatorship estate as provided in section-30-339 sections 30-2614 and 30-2659, five dollars. The above fees relating to conservatorships shall be based on the gross value of the guardianship-or conservatorship estate, including both real and personal property. The gross value shall mean the actual value of the estate less liens, and shall be determined as of the time of applying for guardian--or a conservator. If the gross value of such estate, originally being five thousand dollars or less, should thereafter exceed the value of five thousand dollars while the guardianship-or conservatorship is pending, the county judge court shall be entitled to an additional fee of fifteen dollars. ~~For each year thereafter while~~ While such guardianship or conservatorship is pending in said court and reports are filed, or other matters relating thereto come before the court therein, the judge court shall receive for filing and recording each report, one dollar. Where the appointment of a custodian as provided for in sections 38-1001 to 38-1010 is made, the county judge court shall be entitled to receive a fee of ten dollars where the assets of the custodian do not exceed five thousand dollars, and a fee of twenty-five dollars

where the assets of the custodian exceed five thousand dollars.

Sec. 24. That section 33-126.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

33-126.03. ~~In matters for the determination of inheritance tax under the provisions of sections 77-2004 to 77-2037, where no administrator or executor has been appointed, the county judge~~ The fees provided in subdivision (2) of section 33-125 for the formal settlement of the estate of a deceased person include matters for the determination of inheritance tax upon the estate under the provisions of Chapter 77, article 20. In all other matters for the determination of inheritance tax under the provisions of Chapter 77, article 20, the county court shall be entitled to receive fees of ten dollars. Except in cases instituted by the county attorney, such fee shall be paid by the person petitioning for such determination.

Sec. 25. That section 33-126.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

33-126.04. In all estate, ~~testamentary trusts~~ trust, and guardianship matters, in case of contest, the county judge court shall be allowed for each day or fraction thereof consumed in such contest, the sum of two ten dollars; for taking dedimus to prove will, five dollars. In all matters of adoption, for each child adopted two five dollars shall be allowed the judge court for the entire proceeding.

Sec. 26. That section 33-126.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

33-126.05. The county judge court shall be allowed the following miscellaneous fees: For delayed birth registration and adoptive birth registration, for entire proceedings on each, two five dollars; for actions to commit alleged mentally handicapped retarded persons, for any and all services up to and including the judgment or dismissal of the action, four five dollars; for taking and approving any recognizance or bond for each of the same, one dollar; for issuing marriage license, administering oath therein, and recording certificate, five dollars; for marriage ceremony, five dollars; for filing, approving, and recording official bonds or bonds of abstracters, two dollars; for depositing will for safekeeping and indexing same, one dollar. The legal

fees for printing notices required by law to be printed in some newspaper shall be allowed in addition to the fees herein allowed. For the following services performed by the county judge court, he it shall be entitled to receive the following fees: For temporary restraining order in injunction, in the absence of the district judge, two dollars; appointment of appraisers in condemnation proceedings, five dollars, plus one dollar for each additional parcel of land included in the petition, where more than one; certifying report of appraisers to county clerk or register of deeds, and making transcript of same to the district court, one dollar per page. In addition to the fees provided in sections 33-123 to 33-125, the county judge court shall be entitled to the following fees: For transcripts, copies, certified copies, taking depositions, one dollar per page; for executing certificate and affixing the seal, fifty cents; for comparing copies presented for certification, which copies are not prepared by the county judge court or his its employees, a fee at the rate of ten cents per page where the size of the page does not exceed 8 1/2 x 14 inches, and fifteen cents per page where the size of the page is in excess thereof; and in any other matter, in which there is not a fee specifically provided for herein, the fees of the clerk of the district court, as authorized by law for similar services, shall be collected.

Sec. 27. The county court shall be entitled to collect the following fees: For the registration of any trust, whether testamentary or not, five dollars; for each proceeding initiated in county court concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts, ten dollars.

Sec. 28. That section 42-105, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-105. When either party is a minor, no license shall be granted without the written consent under oath of: (1) Either one of the parents of such minor, if the parents are living together; (2) the parent having the legal custody of such minor, if the parents are living separate and apart from each other; (3) the surviving parent, if one of the parents of such minor is deceased; or (4) the guardian, conservator, or person under whose care and government such minor may be, if both parents of such minor are deceased or if such guardian, conservator, or person has the legal and actual custody of such minor. The county judge court shall be justified in issuing the

license, without further proof, upon an affidavit setting forth the facts with reference to the conditions above specified and giving consent to the marriage, signed by the person authorized to give written consent under such circumstances.

Sec. 29. That section 42-341, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-341. A divorce from the bonds of matrimony obtained in another jurisdiction shall be of no force or effect in this state, if both parties to the marriage were domiciled in this state at the time the proceeding for the divorce was commenced except as provided in section 30-2353.

Sec. 30. That section 49-801, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

49-801. Unless the context is shown to intend otherwise, words and phrases in the statutes of Nebraska hereafter enacted are used in the following sense:

(1) Acquire when used in connection with a grant of power or property right to any person includes the purchase, grant, gift, devise, bequest, and the obtaining by eminent domain.

(2) Action includes any proceeding in any court of this state.

(3) Attorney means attorney at law.

(4) Company includes any corporation, partnership, joint stock company, joint venture, or association.

(5) Domestic when applied to corporations means all those created by authority of this state.

~~(6) Executor when used in the statutes relating to probate proceedings shall be construed to include an administrator with will annexed.~~

{7} {6} Federal refers to the United States.

{8} {7} Foreign when applied to corporations includes all those created by authority other than that of this state.

{9} [8] Grantee includes every person to whom any estate or interest passes in or by any conveyance.

{10} [9] Grantor includes every person from or by whom any estate or interest passes in or by any conveyance.

{11} [10] Inhabitant shall be construed to mean a resident in the particular locality in reference to which that word is used.

~~{12} [11] Issue as applied to the descent of real estate includes all the lawful lineal descendants of the ancestor.~~

{13} [11] Land or real estate includes lands, tenements and hereditaments and all rights thereto and interest therein, other than a chattel interest.

{14} [12] Magistrate includes county judge, municipal judge, and associate county judge.

{15} [13] Month means calendar month.

{16} [14] Oath includes affirmation in all cases in which an affirmation may be substituted for an oath.

{17} [15] Peace officer includes sheriffs, constables, coroners, jailers, marshals, policemen, state highway patrolmen, members of the National Guard on active service by direction of the Governor during periods of emergency, and all other persons with similar authority to make arrests.

{18} [16] Person includes bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, joint stock companies and associations.

{19} [17] Personal estate includes money, goods, chattels, claims, and evidences of debt.

{20} [18] Process means a summons, subpoena, or notice to appear issued out of a court in the course of judicial proceedings.

{21} [19] State when applied to different states of the United States shall be construed to extend to and include the District of Columbia and the several territories organized by Congress.

{22} [20] Sworn includes affirmed in all cases in which an affirmation may be substituted for an oath.

~~{23}~~ {21} The United States includes territories, outlying possessions and the District of Columbia.

~~{24}~~ {22} Violate includes failure to comply with.

~~{25}~~ ~~Will includes codicils and last will means last will and testament.~~

~~{26}~~ {23} Writ signifies an order or citation in writing issued in the name of the state out of a court or by a judicial officer.

~~{27}~~ {24} Year means calendar year.

Sec. 31. That section 77-2004, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2004. In the case of a father, mother, husband, wife, child, brother, sister, wife or widow of a son, husband of a daughter, child or children legally adopted as such in conformity with the laws of the state where adopted, any lineal descendant born in lawful wedlock, or any lineal descendant legally adopted as such in conformity with the laws of the state where adopted; or to any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent; Provided, that no one shall be considered a person to whom the deceased stood in the acknowledged relation of a parent unless he shall have been a member of the household of the deceased and shall have had his permanent home in the home of the deceased for at least five continuous years during his minority; the rate of tax shall be one per cent of the clear market value of the property in excess of ten thousand dollars received by each person. Any interest in property, including any interest acquired in the manner set forth in section 77-2002, which may be valued at a sum less than ten thousand dollars shall not be subject to tax. In addition the homestead allowance, exempt property, and family maintenance allowance right ~~of the surviving spouse~~ shall not be subject to tax. The intestate succession interest of any spouse ~~passing under the provisions of sections 39-404 to 39-407~~ regardless of value shall not be subject to tax. Interests passing by will to the surviving spouse or in the manner set forth in section 77-2002 to the extent of the value of the succession interest of the spouse shall not be subject to tax. For the purpose of this section the value of all property acquired in the manner set forth in section 77-2002 shall be considered as a part of the decedent's estate for the purpose of determining the value of the

succession interest of a surviving spouse. The amount of the intestate succession interest shall be computed for the purpose of this section without regard to the elective share of a surviving spouse in an augmented estate.

Sec. 32. That section 77-2018.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2018.01. (1) The inheritance tax, if any, imposed under sections 77-2001 to 77-2037 may be determined either (a) ~~in the probate of the estate of the deceased, including any proceedings brought under the provisions of sections 30-4704 to 30-4746~~ Chapter 30, article 24 or 25, or (b) ~~in the absence of probate of the estate in this state, in a proceeding instituted for the sole purpose of determining such tax.~~

(2) ~~in the probate of an estate, proceedings~~ Proceedings for determination of the tax may be initiated either (a) by order of the county judge court before whom which probate any proceeding is pending, (b) by application of the ~~administrator or executor~~ personal representative, (c) by application of the county attorney, or (d) by application of any person having a legal interest in the property involved in the determination of the tax.

Sec. 33. That section 77-2018.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2018.02. (1) In the absence of ~~probate of the estate any proceeding brought under Chapter 30, article 24 or 25,~~ any proceeding brought under Chapter 30, article 24 or 25, in this state, proceedings for the determination of the tax may be instituted in the county court of the county where the property or any part thereof which might be subject to tax is situated, ~~by the petition of the county attorney or any person having an interest in the property involved in determination of the tax.~~

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

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

(4) If it appears to the county judge court, upon the filing of the petition, by any person other than the county attorney, that no assessment of inheritance tax could result, he it shall forthwith enter thereon an order directing the county attorney to show cause, within one week from the service thereof, why determination should not be made that no inheritance tax is due on account of the property described in the petition and the potential lien thereof on such property extinguished. Upon service of such order to show cause and failure of such showing by the county attorney, notice of such hearing by publication, referred to in subsections (2) and (3) of this section, shall be dispensed with, and the petitioner shall be entitled to a determination of no tax due on account of the property described in the petition, and any potential lien shall be extinguished.

(5) If it shall appear to the county judge court that (a) the county attorney of each county in which the property described in the petition is located has executed a waiver of notice upon him to show cause, or of the time and place of hearing, and has entered a voluntary appearance in such proceeding in behalf of the county and the State of Nebraska, and (b) all persons against whom an inheritance tax may be assessed are either a petitioner or have executed a waiver of notice upon them to show cause, or of the time and place of hearing, and have entered a voluntary appearance, the court may dispense with the notice provided for in subsections (2) and (3) of this section and proceed without delay to make a determination of inheritance tax, if any, due on account of the property described in the petition.

Sec. 34. This act shall become operative on January 1, 1977.

Sec. 35. That original sections 8-201, 8-317, 16-634, 21-20,105, 25-207, 25-308, 25-309, 25-819, 30-1601, 30-1610, 31-415, 31-822, 33-125, 33-126.02, 33-126.03, 33-126.04, 33-126.05, 42-105, 42-341, 49-801, 77-2004, 77-2018.01, and 77-2018.02, Reissue Revised

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Statutes of Nebraska, 1943, sections 24-536, 24-554, 24-559, 24-601, 30-1603, 30-2487, 30-2499, and 30-2622, Revised Statutes Supplement, 1974, and section 25-307, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 480, Eighty-fourth Legislature, First Session, 1975, are repealed.