

LEGISLATIVE BILL 165

Approved by the Governor April 2, 1997

Introduced by Robak, 22

AN ACT relating to civil procedure; to amend sections 25-221, 25-21,203, 48-190, 77-5019, and 84-917, Reissue Revised Statutes of Nebraska; to change trial procedure for limitation of action issues; to change provisions relating to service of summons on the state and political subdivisions; and to repeal the original sections.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 25-221, Reissue Revised Statutes of Nebraska, is amended to read:

25-221. In any action in which it is claimed by one or more of the defendants that the action is barred by the statute of limitations any party may move that the issue raised thereby by the statute of limitations be tried separately and determined before any other issues in the case. Issues of fact raised by the statute of limitations shall be tried before a jury unless trial by jury is waived by all parties. Issues of law raised by the statute of limitations shall be determined by the court without a jury. are tried and in such event the court shall proceed to determine the issue relating to the statute of limitations before trying other issues in the case. If the issue raised by the statute of limitations is finally determined by the jury or the court in favor of the plaintiff the remaining issues shall then be tried. If the issue raised by the statute of limitations is finally determined by the jury or the court in favor of the defendant the action or actions barred by the statute of limitations shall be dismissed.

Sec. 2. Section 25-21,203, Reissue Revised Statutes of Nebraska, is amended to read:

25-21,203. When action is brought under section 25-21,201, summons shall be served upon the state in the manner provided for service of a summons in a civil action section 25-510.02. An action brought under subdivision (4) of section 25-21,201 may be brought in Lancaster County, Nebraska, or in any county in which the drainage district, irrigation district, municipal corporation, or other political or governmental subdivision whose bonds or other obligations are involved is situated either in whole or in part.

Sec. 3. Section 48-190, Reissue Revised Statutes of Nebraska, is amended to read:

48-190. The state and governmental agencies created by the state may be sued in the Nebraska Workers' Compensation Court upon claims for compensation benefits under the Nebraska Workers' Compensation Act in the same manner as provided by such act for suits against individuals and corporations. In such proceedings summons issued by the compensation court shall be served in the manner provided for service of a summons in a civil action section 25-510.02. The issuance and service of summons in such manner shall be binding upon the state and such agencies in such actions, and the Attorney General is hereby authorized and empowered to waive the issuance and service of summons and enter voluntary appearance in such suits against the State of Nebraska.

Sec. 4. Section 77-5019, Reissue Revised Statutes of Nebraska, is amended to read:

77-5019. (1) Any person aggrieved by a final decision in a case appealed to the commission, whether the decision is affirmative or negative in form, shall be entitled to judicial review in the Court of Appeals. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(2)(a) Proceedings for review shall be instituted by filing a petition in the Court of Appeals within thirty days after the notification of the final decision by the commission. All parties of record shall be made parties to the proceedings for review. If the commission's only role in a case is to act as a neutral factfinding body, the commission shall not be a party of record. In all other cases, the commission shall be a party of record. Summons shall be served within thirty days after the filing of the petition in the manner provided for service of a summons in a civil action section 25-510.02. If the commission is not a party of record, the petitioner shall serve a copy of the petition and a request for preparation of the official record upon the commission within thirty days after the filing of the petition. The court, in its discretion, may permit other interested persons to intervene.

(b) A petition for review shall set forth: (i) The name and mailing address of the petitioner; (ii) the name and mailing address of the county whose action is at issue or the commission; (iii) identification of the final decision at issue together with a duplicate copy of the final decision; (iv) the identification of the parties in the case that led to the final decision; (v) the facts to demonstrate proper venue; (vi) the petitioner's reasons for believing that relief should be granted; and (vii) a request for relief, specifying the type and extent of the relief requested.

(3) The filing of the petition or the service of summons upon the commission shall not stay enforcement of a decision. The commission may order a stay. The court may order a stay after notice of the application for the stay to the commission and to all parties of record. If the commission has found that its action on an application for stay or other temporary remedies is justified to protect against a substantial threat to the public health, safety, or welfare, the court may not grant relief unless the court finds that: (a) The applicant is likely to prevail when the court finally disposes of the matter; (b) without relief, the applicant will suffer irreparable injuries; (c) the grant of relief to the applicant will not substantially harm other parties to the proceedings; and (d) the threat to the public health, safety, or welfare relied on by the commission is not sufficiently serious to justify the commission's action in the circumstances. The court may require the party requesting the stay to give bond in such amount and conditioned as the court directs.

(4) Within thirty days after service of the petition or within such further time as the court for good cause shown allows, the commission shall prepare and transmit to the court a certified copy of the official record of the proceedings had before the commission. The official record shall include: (a) Notice of all proceedings; (b) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the commission pertaining to the case; (c) the transcribed record of the hearing before the commission, including all exhibits and evidence introduced during the hearing, a statement of matters officially noticed by the commission during the proceeding, and all proffers of proof and objections and rulings thereon; and (d) the final order appealed from. The commission shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The commission may require payment or bond prior to the transmittal of the record.

(5) The review shall be conducted by the court for error on the record of the commission. If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the commission, the court may remand the case to the commission for further proceedings. The court may affirm, reverse, or modify the decision of the commission or remand the case for further proceedings.

(6) Appeals under this section shall be given precedence over all civil cases.

Sec. 5. Section 84-917, Reissue Revised Statutes of Nebraska, is amended to read:

84-917. (1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review under the Administrative Procedure Act. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(2)(a) Proceedings for review shall be instituted by filing a petition in the district court of the county where the action is taken within thirty days after the service of the final decision by the agency. All parties of record shall be made parties to the proceedings for review. If an agency's only role in a contested case is to act as a neutral factfinding body, the agency shall not be a party of record. In all other cases, the agency shall be a party of record. Summons shall be served within thirty days of the filing of the petition in the manner provided for service of a summons in a civil action section 25-510.02. If the agency whose decision is appealed from is not a party of record, the petitioner shall serve a copy of the petition and a request for preparation of the official record upon the agency within thirty days of the filing of the petition. The court, in its discretion, may permit other interested persons to intervene.

(b) A petition for review shall set forth: (i) The name and mailing address of the petitioner; (ii) the name and mailing address of the agency whose action is at issue; (iii) identification of the final decision at issue together with a duplicate copy of the final decision; (iv) identification of the parties in the contested case that led to the final decision; (v) facts to

demonstrate proper venue; (vi) the petitioner's reasons for believing that relief should be granted; and (vii) a request for relief, specifying the type and extent of the relief requested.

(3) The filing of the petition or the service of summons upon such agency shall not stay enforcement of a decision. The agency may order a stay. The court may order a stay after notice of the application therefor to such agency and to all parties of record. If the agency has found that its action on an application for stay or other temporary remedies is justified to protect against a substantial threat to the public health, safety, or welfare, the court may not grant relief unless the court finds that: (a) The applicant is likely to prevail when the court finally disposes of the matter; (b) without relief, the applicant will suffer irreparable injuries; (c) the grant of relief to the applicant will not substantially harm other parties to the proceedings; and (d) the threat to the public health, safety, or welfare relied on by the agency is not sufficiently serious to justify the agency's action in the circumstances. The court may require the party requesting such stay to give bond in such amount and conditioned as the court may direct.

(4) Within thirty days after service of the petition or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the proceedings had before the agency. Such official record shall include: (a) Notice of all proceedings; (b) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the agency pertaining to the contested case; (c) the transcribed record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and (d) the final order appealed from. The agency shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The agency may require payment or bond prior to the transmittal of the record.

(5)(a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the review shall be conducted by the court without a jury on the record of the agency, and review may not be obtained of any issue that was not raised before the agency unless such issue involves one of the grounds for reversal or modification enumerated in subdivision (6)(a) of this section. When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the review shall be conducted by the court without a jury de novo on the record of the agency.

(b) If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the agency, the court may remand the case to the agency for further proceedings.

(6)(a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the agency decision is:

- (i) In violation of constitutional provisions;
- (ii) In excess of the statutory authority or jurisdiction of the agency;
- (iii) Made upon unlawful procedure;
- (iv) Affected by other error of law;
- (v) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or
- (vi) Arbitrary or capricious.

(b) When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the court may affirm, reverse, or modify the decision of the agency or remand the case for further proceedings.

(7) The review provided by this section shall not be available in any case where other provisions of law prescribe the method of appeal.

Sec. 6. Original sections 25-221, 25-21,203, 48-190, 77-5019, and 84-917, Reissue Revised Statutes of Nebraska, are repealed.