

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 204**

Introduced by Hilgers, 21.

Read first time January 10, 2017

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to court procedures; to amend section 24-1106,
- 2 Reissue Revised Statutes of Nebraska, 2008, and section 25-1332,
- 3 Reissue Revised Statutes of Nebraska; to change provisions relating
- 4 to appeals to the Supreme Court, service on employees of the state,
- 5 and summary judgment; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 24-1106, Reissue Revised Statutes of Nebraska,  
2 2008, is amended to read:

3 24-1106 (1) In cases which were appealable to the Supreme Court  
4 before September 6, 1991, the appeal, if taken, shall be to the Court of  
5 Appeals except in capital cases, cases in which life imprisonment has  
6 been imposed, and cases involving the constitutionality of a statute.

7 (2) Any party to a case appealed to the Court of Appeals may file a  
8 petition in the Supreme Court to bypass the review by the Court of  
9 Appeals and for direct review by the Supreme Court. The procedure and  
10 time for filing the petition shall be as provided by rules of the Supreme  
11 Court. In deciding whether to grant the petition, the Supreme Court may  
12 consider one or more of the following factors:

13 (a) Whether the case involves a question of first impression or  
14 presents a novel legal question;

15 (b) Whether the case involves a question of state or federal  
16 constitutional interpretation;

17 (c) Whether the case raises a question of law regarding the validity  
18 of a statute;

19 (d) Whether the case involves issues upon which there is an  
20 inconsistency in the decisions of the Court of Appeals or of the Supreme  
21 Court; ~~and~~

22 (e) Whether the case is one of significant public interest; ~~and~~ -

23 (f) Whether the case involves a question of qualified immunity in  
24 any civil action under 42 U.S.C. 1983, as the section existed on the  
25 effective date of this act.

26 When a petition for direct review is granted, the case shall be  
27 docketed for hearing before the Supreme Court.

28 (3) The Supreme Court shall by rule provide for the removal of a  
29 case from the Court of Appeals to the Supreme Court for decision by the  
30 Supreme Court at any time before a final decision has been made on the  
31 case by the Court of Appeals. The removal may be on the recommendation of

1 the Court of Appeals or on motion of the Supreme Court. Cases may be  
2 removed from the Court of Appeals for decision by the Supreme Court for  
3 any one or more of the reasons set forth in subsection (2) of this  
4 section or in order to regulate the caseload existing in either the Court  
5 of Appeals or the Supreme Court. The Chief Judge of the Court of Appeals  
6 and the Chief Justice of the Supreme Court shall regularly inform each  
7 other of the number and nature of cases docketed in the respective court.

8       Sec. 2. Any employee of the state, as defined in section 81-8,210,  
9 sued in an individual capacity for an act or omission occurring in  
10 connection with duties performed on the state's behalf, regardless of  
11 whether the employee is also sued in an official capacity, may be served  
12 by serving the employee under section 25-508.01 and also by serving the  
13 state under section 25-510.02.

14       Sec. 3. Section 25-1332, Reissue Revised Statutes of Nebraska, is  
15 amended to read:

16       25-1332 (1) The motion shall be served at least ten days before the  
17 time fixed for the hearing. The adverse party prior to the day of hearing  
18 may serve opposing affidavits. The judgment sought shall be rendered  
19 forthwith if the pleadings and the evidence admitted at the hearing show  
20 that there is no genuine issue as to any material fact and that the  
21 moving party is entitled to a judgment as a matter of law. The evidence  
22 that may be received on a motion for summary judgment includes  
23 depositions, answers to interrogatories, admissions, stipulations, and  
24 affidavits. A summary judgment, interlocutory in character, may be  
25 rendered on the issue of liability alone although there is a genuine  
26 issue as to the amount of damages.

27       (2) A party asserting that a fact cannot be or is genuinely disputed  
28 must support the assertion by:

29       (a) Citing to particular parts of materials in the record, including  
30 depositions, answers to interrogatories, admissions, stipulations,  
31 affidavits, or other materials; or

1        (b) Showing that the materials cited do not establish the absence or  
2 presence of a genuine dispute, or that an adverse party cannot produce  
3 admissible evidence to support the fact.

4        (3) If a party fails to properly support an assertion of fact or  
5 fails to properly address another party's assertion of fact as required  
6 by subsection (2) of this section, the court may:

7        (a) Give an opportunity to properly support or address the fact;

8        (b) Consider the fact undisputed for purposes of the motion;

9        (c) Grant summary judgment if the motion and supporting materials,  
10 including the facts considered undisputed, show that the movant is  
11 entitled to summary judgment; or

12        (d) Issue any other appropriate order.

13        Sec. 4.    Original section 24-1106, Reissue Revised Statutes of  
14 Nebraska, 2008, and section 25-1332, Reissue Revised Statutes of  
15 Nebraska, are repealed.