

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 438

Introduced by Conrad, 46.

Read first time January 13, 2023

Committee: Judiciary

1 A BILL FOR AN ACT relating to civil procedure; to amend sections 25-323
2 and 25-331, Reissue Revised Statutes of Nebraska; to provide for
3 awards of attorney's fees in appeals; to change provisions and
4 modernize language relating to third-party practice; to harmonize
5 provisions; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. A statute that authorizes the award of attorney's fees
2 to a party in a civil action or proceeding also authorizes an appellate
3 court to award attorney's fees if the party prevails on an appeal from a
4 judgment or order in the action or proceeding. This section does not
5 apply if another section of law specifically authorizes or prohibits the
6 award of attorney's fees on an appeal from such a judgment or order.

7 Sec. 2. Section 25-323, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 25-323 The court may determine any controversy between parties
10 before it when it can be done without prejudice to the rights of others
11 or by saving their rights; but when a determination of the controversy
12 cannot be had without the presence of other parties, the court shall must
13 order them to be brought in.

14 Any person whose negligence was or may have been a proximate cause
15 of an accident or occurrence alleged by the plaintiff, other than parties
16 who have been released by the plaintiff and are not subject to suit
17 pursuant to section 25-21,185.11, may be brought into the suit by any
18 party in the manner provided in section 25-331 or 25-705.

19 Sec. 3. Section 25-331, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 25-331 (1)(a) (1) At any time after commencement of the action, a
22 defending party may, as a third-party plaintiff, serve may cause a
23 summons and complaint on a nonparty:

24 (i) Who to be served upon a person not a party to the action who is
25 or may be liable to the defending party third-party plaintiff for all or
26 part of the plaintiff's claim against the defending party; or

27 (ii) Whose negligence was or may have been a proximate cause of the
28 transaction or occurrence that is the subject matter of the plaintiff's
29 claim and who is not precluded by section 25-21,185.11 from being made a
30 party third-party plaintiff.

31 (b) The third-party plaintiff shall, by motion, need not obtain the

1 court's leave to make the service if the third-party plaintiff files the
2 third-party complaint more not later than fourteen ten days after serving
3 its filing the original answer. Otherwise the third-party plaintiff must
4 obtain leave of the trial court on motion upon notice to all parties to
5 the action.

6 (c) The person served with the summons and third-party complaint,
7 hereinafter called the third-party defendant, has shall have all the
8 rights and obligations of a defendant, including those created the rights
9 authorized by this section and by the rules promulgated by the Supreme
10 Court pursuant to sections 25-801.01 and 25-1273.01.

11 (d) The third-party defendant may assert against the plaintiff any
12 defense that defenses which the third-party plaintiff has to the
13 plaintiff's claim. The third-party defendant may also assert any claim
14 against the plaintiff any claim arising out of the transaction or
15 occurrence that is the subject matter of the plaintiff's claim against
16 the third-party plaintiff.

17 (e) The plaintiff may assert any claim against the third-party
18 defendant any claim arising out of the transaction or occurrence that is
19 the subject matter of the plaintiff's claim against the third-party
20 plaintiff. The third-party defendant shall have all the rights of a
21 defendant including the rights authorized by this section. The court on
22 its own motion, or motion of any party, may move to strike the third-
23 party claim, or for its severance or separate trial if the third-party
24 claim should delay trial, might tend to confuse a jury, or in any way
25 jeopardize the rights of the plaintiff.

26 (f) A defending party may assert against the third-party defendant a
27 claim that the third-party defendant is liable to the defending party for
28 all or part of the claim against the defending party.

29 (g) A third-party defendant or subsequent defendants may bring in a
30 nonparty if subdivision (1)(a) of this section would allow a defending
31 party to do so proceed under this section.

1 (h) Any party may move to strike the third-party claim, to sever it,
2 or try it separately.

3 (2) When a claim counterclaim is asserted against a plaintiff, the
4 plaintiff may bring in a nonparty if subdivision (1)(a) of cause a third
5 party to be brought in under circumstances which under this section would
6 allow a defending party entitle a defendant to do so.

7 Sec. 4. Original sections 25-323 and 25-331, Reissue Revised
8 Statutes of Nebraska, are repealed.