

E AND R AMENDMENTS TO LB 912

Introduced by Slama, 1, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

3 Section 1. Sections 1 to 7 of this act shall be known and may be
4 cited as the County Court Special Proceedings Act.

5 Sec. 2. (1) The County Court Special Proceedings Act governs civil
6 actions in county court in which the sole relief sought is a money
7 judgment and in which all claims, other than compulsory counterclaims,
8 for all damages by or against any one party total less than or equal to
9 the county court jurisdictional amount set forth in subdivision (5) of
10 section 24-517, including damages of any kind, penalties, prefilng
11 interest, and attorney's fees, but excluding prejudgment interest accrued
12 after the filing date, postjudgment interest, and costs.

13 (2) The act does not apply to Small Claims Court actions or domestic
14 relations matters or paternity or custody determinations as defined in
15 section 25-2740.

16 (3) For the purposes of the act, side means all litigants with
17 generally common interests in the litigation.

18 Sec. 3. (1) An eligible plaintiff may elect to proceed with county
19 court special proceedings by certifying that the relief sought meets the
20 requirements of section 2 of this act. The certification must be on a
21 form approved by the Supreme Court, signed by all plaintiffs and their
22 attorneys, if represented, and filed with the complaint. The
23 certification is not admissible to prove a plaintiff's damages in any
24 proceeding.

25 (2) Except as otherwise specifically provided by the County Court
26 Special Proceedings Act, the Nebraska rules of civil procedure are
27 applicable to actions under the act.

1 (3) A party proceeding under the act may not recover a judgment in
2 excess of the county court jurisdictional amount set forth in subdivision
3 (5) of section 24-517, nor may a judgment be entered against a party in
4 excess of such amount, excluding prejudgment interest that accrues after
5 the filing date, postjudgment interest, and costs. The jury, if any, must
6 not be informed of the amount. If the jury returns a verdict for damages
7 in excess of such amount for or against a party, the court shall not
8 enter judgment on that verdict in excess of such amount, exclusive of the
9 prejudgment interest that accrues after the filing date, postjudgment
10 interest, and costs.

11 (4) Upon timely application of any party, the county court may
12 terminate application of the act and enter such orders as are appropriate
13 under the circumstances if:

14 (a) The moving party makes a specific showing of substantially
15 changed circumstances sufficient to render the application of the act
16 unfair; or

17 (b) A party has in good faith filed a compulsory counterclaim that
18 seeks relief other than that allowed under the act.

19 (5) Permissive counterclaims are subject to the county court
20 jurisdictional limit on damages under the act, unless the court severs
21 the permissive counterclaim.

22 Sec. 4. (1) Except upon agreement of the parties or leave of court
23 granted upon a showing of good cause, all discovery in county court
24 special proceedings must be completed no later than sixty days before
25 trial.

26 (2) Except upon agreement of the parties or leave of court granted
27 upon a showing of good cause, discovery in county court special
28 proceedings is subject to the following additional limitations:

29 (a) Each side shall serve no more than ten interrogatories on any
30 other side;

31 (b) Each side shall serve no more than ten requests for production

1 on any other side;

2 (c) Each side shall serve no more than ten requests for admission on
3 any other side. This limit does not apply to requests for admission of
4 the genuineness of documents that a party intends to offer into evidence
5 at trial;

6 (d) One deposition of each party may be taken. With regard to
7 corporations, partnerships, voluntary associations, or any other groups
8 or entities named as a party, one representative deponent may be deposed;
9 and

10 (e) Each side may take the deposition of up to two nonparties.

11 (3) Each side is entitled to one retained expert, except upon
12 agreement of the parties or leave of court granted upon a showing of good
13 cause.

14 (4) A motion for leave of court to modify the limitations set forth
15 in this section must be in writing and must set forth the proposed
16 additional discovery or expert and the reasons establishing good cause.

17 Sec. 5. (1) Any party may file any motion permitted under rules
18 adopted by the Supreme Court for pre-answer motions. Unless the court
19 orders a stay, the filing of a motion to dismiss will not eliminate or
20 postpone otherwise applicable pleading or discovery requirements.

21 (2) A motion for summary judgment must be filed no later than ninety
22 days before trial.

23 Sec. 6. An action under the County Court Special Proceedings Act
24 should ordinarily be submitted to the jury or the court within two
25 business days from the commencement of trial. Unless the court allows
26 additional time for good cause shown, each side shall be allowed no more
27 than six hours to complete jury selection, opening statements,
28 presentation of evidence, examination and cross-examination of witnesses,
29 and closing arguments. Time spent on objections, bench conferences, and
30 challenges for cause to a juror are not included in the time limit.

31 Sec. 7. (1) Parties to an action under the County Court Special

1 Proceedings Act should stipulate to factual and evidentiary matters to
2 the greatest extent possible.

3 (2) For purposes of the act, the court may overrule objections based
4 on authenticity and hearsay to the admission of a document,
5 notwithstanding the absence of testimony or certification from a
6 custodian or other qualified witness, if:

7 (a) The party offering the document gives notice to all other
8 parties of the party's intention to offer the document into evidence at
9 least ninety days in advance of trial. The notice must be given to all
10 parties together with a copy of any document intended to be offered;

11 (b) The document on its face appears to be what the proponent claims
12 it is;

13 (c) The document on its face appears not to be hearsay or appears to
14 fall within a hearsay exception set forth in Nebraska law; and

15 (d) The objecting party has not raised a substantial question as to
16 the authenticity or trustworthiness of the document.

17 (3) Nothing in this section affects the operation of the Nebraska
18 Evidence Rules.

19 (4) Nothing in subsection (2) of this section authorizes admission
20 of a document that contains hearsay within hearsay, unless the court
21 determines from the face of the document that each part of the combined
22 statements conforms with a hearsay exception set forth in Nebraska law.

23 (5) Any authenticity or hearsay objections to a document as to which
24 notice has been provided under subdivision (2)(a) of this section must be
25 made within thirty days after receipt of the notice.

26 (6)(a) The report of any treating health care provider concerning
27 the plaintiff may be used in lieu of deposition or in-court testimony of
28 the health care provider, so long as the report offered into evidence is
29 on a form adopted for such purpose by the Supreme Court and is signed by
30 the health care provider making the report.

31 (b) The Supreme Court shall adopt a form for purposes of subdivision

1 (6)(a) of this section.

2 (c) Unless otherwise stipulated or ordered by the court, a copy of
3 any completed health care provider report under subdivision (6)(a) of
4 this section must be served on all parties at least ninety days in
5 advance of trial. Any objections to the health care provider statement,
6 including an objection that the statement is incomplete or does not
7 otherwise comply with this subsection, must be made within thirty days
8 after receipt of the statement. For good cause shown, the court may issue
9 such orders regarding the health care provider report as justice may
10 require, including an order permitting a health care provider to
11 supplement the report.

12 (d) Any party against whom a health care provider report may be used
13 has the right, at the party's own initial expense, to cross-examine by
14 deposition the health care provider signing the report, and the
15 deposition may be used at trial.

16 Sec. 8. Section 24-734, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 24-734 (1) A judge of any court established under the laws of the
19 State of Nebraska shall, in any case in which that judge is authorized to
20 act, have power to exercise the powers conferred upon the judge and
21 court, and specifically to:

22 (a) Upon the stipulation of the parties to an action, hear and
23 determine any matter, including the trial of an equity case or case at
24 law in which a jury has been waived;

25 (b) Hear and determine pretrial and posttrial matters in civil cases
26 not involving testimony of witnesses by oral examination;

27 (c) With the consent of the defendant, receive pleas of guilty and
28 pass sentences in criminal cases;

29 (d) With the consent of the defendant, hear and determine pretrial
30 and posttrial matters in criminal cases;

31 (e) Hear and determine cases brought by petition in error or appeal

1 not involving testimony of witnesses by oral examination;

2 (f) Hear and determine any matter in juvenile cases with the consent
3 of the guardian ad litem or attorney for the minor, the other parties to
4 the proceedings, and the attorneys for those parties, if any; and

5 (g) Without notice, make any order and perform any act which may
6 lawfully be made or performed by him or her ex parte in any action or
7 proceeding which is on file in any district of this state.

8 (2) A judgment or order made pursuant to this section shall be
9 deemed effective when the judgment is entered in accordance with the
10 provisions of subsection (3) of section 25-1301.

11 (3) The judge, in his or her discretion, may in any proceeding
12 authorized by the provisions of this section not involving testimony of
13 witnesses by oral examination, use telephonic, videoconferencing, or
14 similar methods to conduct such proceedings. The court may require the
15 parties to make reimbursement for any charges incurred.

16 (4) In A judge, in any criminal case, with the consent of the
17 parties, a judge may permit any witness who is to be examined by oral
18 examination to appear by telephonic, videoconferencing, or similar
19 methods, with any costs thereof to be taxed as costs.

20 (5)(a) Unless an objection under subdivision (5)(c) of this section
21 is sustained, in any civil case, a judge shall, for good cause shown,
22 permit any witness who is to be examined by oral examination to appear by
23 telephonic, videoconferencing, or similar methods.

24 (b) Unless the court orders otherwise for good cause shown, all
25 costs of testimony taken by telephone, videoconferencing, or similar
26 methods shall be provided and paid by the requesting party and may not be
27 charged to any other party. A court may find that there is good cause to
28 allow the testimony of a witness to be taken by telephonic,
29 videoconferencing or similar methods if:

30 (i) The witness is otherwise unavailable to appear because of age,
31 infirmity, or illness;

1 (ii) The personal appearance of the witness cannot be secured by
2 subpoena or other reasonable means;

3 (iii) A personal appearance would be an undue burden or expense to a
4 party or witness; or

5 (iv) There are any other circumstances that constitute good cause
6 for allowing the testimony of the witness to be taken by telephonic,
7 videoconferencing, or similar methods.

8 (c) A party may object to examination by telephonic,
9 videoconferencing, or similar methods under subdivision (5)(a) of this
10 section on grounds of unreliability or unfairness. The objecting party
11 has the burden of proving unreliability or unfairness by a preponderance
12 of the evidence.

13 (d) Nothing in this section shall prohibit an award of expenses,
14 including attorney fees, pursuant to Neb. Ct. R. of Discovery 6-337.

15 (6) ~~(5)~~ The enumeration of the powers in subsections (1), (2), (3),
16 and (4), and (5) of this section shall not be construed to deny the right
17 of a party to trial by jury in the county in which the action was first
18 filed if such right otherwise exists.

19 (7) ~~(6)~~ Nothing in this section shall be construed to exempt
20 proceedings under this section from the provisions of the Guidelines for
21 Use by Nebraska Courts in Determining When and Under What Conditions a
22 Hearing Before Such Court May Be Closed in Whole or in Part to the
23 Public, adopted by the Supreme Court of the State of Nebraska September
24 8, 1980, and any amendments to those provisions.

25 Sec. 9. (1) When authorized by rules promulgated by the Supreme
26 Court, the clerk of the district court may issue a subpoena for discovery
27 in Nebraska for a civil proceeding pending in a foreign jurisdiction.
28 Such a subpoena may command a person to testify at a deposition or
29 command a nonparty to provide discovery without a deposition.

30 (2) The Supreme Court may promulgate rules for subpoenas under this
31 section. The rules may specify the amount of a fee, if any, that must be

1 paid to the clerk of the district court for the issuance of such
2 subpoenas. Any such rules shall not conflict with laws governing such
3 matters.

4 Sec. 10. Section 25-1223, Revised Statutes Cumulative Supplement,
5 2018, is amended to read:

6 25-1223 (1) Upon the request of a party to a civil action or
7 proceeding, a subpoena may be issued to command a person ~~an individual~~ to
8 testify at a trial or deposition. The term trial in reference to a
9 subpoena includes a hearing at which testimony may be taken.

10 (2) The clerk or a judge of the court in which the action or
11 proceeding is pending shall issue a trial subpoena upon the request of a
12 party. An attorney, as an officer of the court, may issue and sign a
13 trial subpoena on behalf of the court if the attorney is authorized to
14 practice in the court. An attorney who issues a subpoena must file a copy
15 of the subpoena with the court on the day the subpoena is issued.

16 (3) A person before whom a deposition may be taken may issue a
17 deposition subpoena on behalf of the court in which the action or
18 proceeding is pending. An attorney, as an officer of the court, may issue
19 and sign a deposition subpoena on behalf of the court if the attorney is
20 authorized to practice in the court.

21 (4) A subpoena shall state the name of the court from which it is
22 issued, the title of the action, and the case number and shall command
23 each person to whom it is directed to appear and testify at the time and
24 place specified in the subpoena.

25 (5) Except as provided in subsection (6) of this section, A trial
26 subpoena that is issued in a civil action or proceeding (a) at the
27 request of an agency of state government or (b) pursuant to section
28 25-2304 shall contain the following statement: As a witness in [insert
29 name of court], you are entitled to receive a witness fee in the amount
30 of [insert amount from section 33-139] for each day that you are required
31 to be in court and, if you live more than one mile from the courthouse,

1 you are also entitled to receive mileage at the rate that state employees
2 receive. Ask the lawyer or party who subpoenaed you or the clerk of the
3 court for information about what you should do to receive the fees and
4 mileage to which you are entitled.

5 (6) A trial subpoena in a civil action or proceeding that commands
6 testimony by an employee of the State of Nebraska or a political
7 subdivision thereof or a privately employed security guard, under the
8 circumstances described in section 33-139.01, shall contain the following
9 statement: As a witness in [insert name of court], you are entitled to be
10 compensated for your actual and necessary expenses if you are required to
11 travel outside of your county of residence to testify. Ask the lawyer or
12 party who subpoenaed you or the clerk of the court for information about
13 what you should do to receive compensation, if any, to which you are
14 entitled.

15 (7) (6) Any other trial subpoena in a civil action or proceeding
16 shall contain the following statement: As a witness in [insert name of
17 court], you are entitled to receive a witness fee in the amount of
18 [insert amount from section 33-139] for each day that you are required to
19 be in court and, if you live more than one mile from the courthouse, you
20 are also eligible to receive mileage at the rate that state employees
21 receive. You should have received your witness fee for one day with this
22 subpoena. Ask the lawyer or party who subpoenaed you or the clerk of the
23 court for information about what you should do to receive the additional
24 fees, if any, and mileage to which you are entitled.

25 (8) (7) The Supreme Court may promulgate forms for subpoenas for use
26 in civil and criminal actions and proceedings. Any such forms shall not
27 be in conflict with the laws governing such matters.

28 (9) (8) A subpoena may be served by a sheriff or constable. It may
29 also be served by a person who is twenty-one years of age or older and
30 who is not a party to the action or proceeding.

31 Sec. 11. Section 25-1224, Revised Statutes Cumulative Supplement,

1 2018, is amended to read:

2 25-1224 (1) A subpoena commanding a person ~~an individual~~ to appear
3 and testify at a trial or deposition may command that at the same time
4 and place specified in the subpoena for the person ~~individual~~ to appear
5 and testify, the person ~~individual~~ must produce designated documents,
6 electronically stored information, or tangible things in the person's
7 ~~individual's~~ possession, custody, or control. The scope of a command to
8 produce documents, electronically stored information, or tangible things
9 pursuant to this section is governed by the rules of discovery in civil
10 cases.

11 (2) The Supreme Court may promulgate a rule for discovery in civil
12 cases that specifies the procedures to be followed when a party seeks to
13 serve a deposition subpoena that commands the person ~~individual~~ to
14 produce designated documents, electronically stored information, or
15 tangible things in the person's ~~individual's~~ possession, custody, or
16 control. Any such rule shall not conflict with the laws governing such
17 matters.

18 Sec. 12. Section 25-1226, Revised Statutes Cumulative Supplement,
19 2018, is amended to read:

20 25-1226 (1) A subpoena for a trial or deposition may be served by
21 personal service, which is made by leaving the subpoena with the person
22 ~~individual~~ to be served, or by certified mail service, which is made by
23 sending the subpoena by certified mail with a return receipt requested
24 showing to whom and where delivered and the date of delivery. Service by
25 certified mail is made on the date of delivery shown on the signed
26 receipt.

27 (2) A subpoena for a trial must be served at least two days before
28 the day on which the person ~~individual~~ is commanded to appear and
29 testify. A court may shorten the period for service for good cause shown.
30 In determining whether good cause exists, a court may consider all
31 relevant circumstances, including, but not limited to, the need for the

1 testimony, the burden on the person individual, and the reason why the
2 person individual was not subpoenaed earlier.

3 Sec. 13. Section 25-1228, Revised Statutes Cumulative Supplement,
4 2018, is amended to read:

5 25-1228 (1) The witness fee for one day's attendance must be served
6 with a trial subpoena except when the subpoena is issued (a) at the
7 request of an agency of state government or (b) pursuant to section
8 25-2304.

9 (2) The person serving the subpoena shall make a return of service
10 stating the name of the person individual served, the date and method of
11 service, and, if applicable, that the required witness fee was served
12 with the subpoena. The return of service must be by affidavit unless the
13 subpoena was served by a sheriff or constable. If service was made by
14 certified mail, the signed receipt must be attached to the return of
15 service.

16 (3) The cost of service of a subpoena is taxable as a court cost,
17 and when service of a subpoena is made by a person other than a sheriff
18 or constable, the cost taxable as a court cost is the lesser of the
19 actual amount incurred for service of process or the statutory fee set
20 for sheriffs in section 33-117.

21 (4) Except as provided in section 25-2304, the party at whose
22 request a trial subpoena is issued in a civil action or proceeding must
23 pay the witness the fees and mileage to which the witness is entitled
24 under section 33-139. Any fees and mileage that were not paid to the
25 witness before the witness testified must be paid to the witness within a
26 reasonable time after the witness testified.

27 Sec. 14. Section 33-106, Revised Statutes Cumulative Supplement,
28 2018, is amended to read:

29 33-106 (1) In addition to the judges' retirement fund fee provided
30 in section 24-703 and the fees provided in section 33-106.03 and except
31 as otherwise provided by law, the fees of the clerk of the district court

1 shall be as provided in this section. ~~follows:~~ There shall be a docket
2 fee of forty-two dollars for each civil and criminal case except:

3 (a) There shall be a docket fee of twenty-five dollars for each a
4 case commenced by filing a transcript of judgment from another court in
5 this state for the purpose of obtaining a lien; as hereinafter provided,

6 (b) For proceedings under the Nebraska Workers' Compensation Act and
7 the Employment Security Law, when provision is made for the fees that may
8 be charged; and

9 (c) There shall be a docket fee of twenty-seven dollars for each a
10 criminal case appealed to the district court from any court inferior
11 thereto as hereinafter provided. There shall be a docket fee of twenty-
12 five dollars for each case commenced by filing a transcript of judgment
13 from another court in this state for the purpose of obtaining a lien.
14 ~~There shall be a docket fee of twenty seven dollars for each criminal~~
15 ~~case appealed to the district court from any court inferior thereto.~~

16 (2) In all cases, other than those appealed from an inferior court
17 or original filings which are within jurisdictional limits of an inferior
18 court and when a jury is demanded in district court, the docket fee shall
19 cover all fees of the clerk, except that the clerk shall be paid for each
20 copy or transcript ordered of any pleading, record, or other document and
21 that the clerk shall be entitled to a fee of fifteen dollars for a
22 records management fee which will be taxed as costs of the case.

23 (3) In all civil cases, except habeas corpus cases in which a
24 poverty affidavit is filed and approved by the court, and for all other
25 services, the docket fee or other fee shall be paid by the party filing
26 the case or requesting the service at the time the case is filed or the
27 service requested.

28 (4) For any other service which may be rendered or performed by the
29 clerk but which is not required in the discharge of his or her official
30 duties, the fee shall be the same as that of a notary public but in no
31 case less than one dollar.

1 Sec. 15. Section 43-2939, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 43-2939 (1) A Parenting Act mediator, including an attorney serving
4 as a parenting plan mediator pursuant to subsection (4) of section
5 43-2938, prior to meeting with the parties in an initial mediation
6 session, shall provide an individual initial screening session with each
7 party to assess the presence of child abuse or neglect, unresolved
8 parental conflict, domestic intimate partner abuse, other forms of
9 intimidation or coercion, or a party's inability to negotiate freely and
10 make informed decisions. If any of these conditions exist, the mediator
11 shall not proceed with the mediation session but shall proceed with a
12 specialized alternative dispute resolution process that addresses safety
13 measures for the parties, if the mediator is on the approved specialized
14 list of an approved mediation center or court conciliation program, or
15 shall refer the parties to a mediator who is so qualified. When public
16 records such as current or expired protection orders, criminal domestic
17 violence cases, and child abuse or neglect proceedings are provided to a
18 mediator, such records shall be considered during the individual initial
19 screening session to determine appropriate dispute resolution methods.
20 The mediator has the duty to determine whether to proceed in joint
21 session, individual sessions, or caucus meetings with the parties in
22 order to address safety and freedom to negotiate. In any mediation or
23 specialized alternative dispute resolution, a mediator has the ongoing
24 duty to assess appropriateness of the process and safety of the process
25 upon the parties.

26 (2) No mediator who represents or has represented one or both of the
27 parties or has had either of the parties as a client as an attorney or a
28 counselor shall mediate the case, unless such services have been provided
29 to both participants and mediation shall not proceed in such cases unless
30 the prior relationship has been disclosed, the role of the mediator has
31 been made distinct from the earlier relationship, and the participants

1 have been given the opportunity to fully choose to proceed. All other
2 potential conflicts of interest shall be disclosed and discussed before
3 the parties decide whether to proceed with that mediator.

4 (3) No mediator who is also a licensed attorney may, after
5 completion of the mediation process, represent either party in the role
6 of attorney in the same matter through subsequent legal proceedings.

7 (4) The mediator shall facilitate the mediation process. Prior to
8 the commencement of mediation, the mediator shall notify the parties
9 that, if the mediator has reasonable cause to believe that a child has
10 been subjected to child abuse or neglect or if the mediator observes a
11 child being subjected to conditions or circumstances which reasonably
12 would result in child abuse or neglect, the mediator is obligated under
13 section 28-711 to report such information to the authorized child abuse
14 and neglect reporting agency and shall report such information unless the
15 information has been previously reported. The mediator shall have access
16 to court files for purposes of mediation under the Parenting Act. The
17 mediator shall be impartial and shall use his or her best efforts to
18 effect an agreement or parenting plan as required under the act. The
19 mediator may interview the child if, in the mediator's opinion, such an
20 interview is necessary or appropriate. The parties shall not bring the
21 child to any sessions with the mediator unless specific arrangements have
22 been made with the mediator in advance of the session. The mediator shall
23 assist the parties in assessing their needs and the best interests of the
24 child involved in the proceeding and may include other persons in the
25 mediation process as necessary or appropriate. The mediator shall advise
26 the parties that they should consult with an attorney.

27 (5) The mediator may terminate mediation if one or more of the
28 following conditions exist:

29 (a) There is no reasonable possibility that mediation will promote
30 the development of an effective parenting plan;

31 (b) Allegations are made of direct physical or significant emotional

1 harm to a party or to a child that have not been heard and ruled upon by
2 the court; or

3 (c) Mediation will otherwise fail to serve the best interests of the
4 child.

5 (6) Until July 1, 2010, either party may terminate mediation at any
6 point in the process. On and after July 1, 2010, a party may not
7 terminate mediation until after an individual initial screening session
8 and one mediation or specialized alternative dispute resolution session
9 are held. The session after the individual initial screening session
10 shall be an individual specialized alternative dispute resolution session
11 if the screening indicated the existence of any condition specified in
12 subsection (1) of this section.

13 Sec. 16. The Revisor of Statutes shall assign section 9 of this act
14 to Chapter 25, article 12.

15 Sec. 17. Original sections 24-734 and 43-2939, Reissue Revised
16 Statutes of Nebraska, and sections 25-1223, 25-1224, 25-1226, 25-1228,
17 and 33-106, Revised Statutes Cumulative Supplement, 2018, are repealed.

18 2. On page 1, strike beginning with "courts" in line 1 through line
19 5 and insert "civil procedure; to amend sections 24-734 and 43-2939,
20 Reissue Revised Statutes of Nebraska, and sections 25-1223, 25-1224,
21 25-1226, 25-1228, and 33-106, Revised Statutes Cumulative Supplement,
22 2018; to adopt the County Court Special Proceedings Act; to change
23 provisions relating to examination of witnesses by telephonic,
24 videoconferencing, and similar methods; to change provisions relating to
25 discovery, subpoenas, witness fees, docket fees, and Parenting Act
26 mediators; to harmonize provisions; to provide a duty for the Revisor of
27 Statutes; and to repeal the original sections."