

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1028

Introduced by Lathrop, 12.

Read first time January 16, 2020

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to small claims; to amend section 25-2804,
- 2 Reissue Revised Statutes of Nebraska; to change provisions relating
- 3 to commencement of actions in Small Claims Court; and to repeal the
- 4 original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 25-2804, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 25-2804 (1) Actions in the Small Claims Court shall be commenced by
4 the plaintiff by filing of a claim, personally, or by mail, or by another
5 method established by Supreme Court rules the plaintiff on a form
6 provided by the clerk of a county court. The claim form shall be executed
7 by the plaintiff in the presence of a judge, a clerk or deputy or
8 assistant clerk of a county court, or a notary public or other person
9 authorized by law to take acknowledgments. If not filed in person, the
10 claim form and appropriate fees shall be mailed by the plaintiff to the
11 court of proper jurisdiction.

12 (2) At the time of the filing of the claim, the plaintiff shall pay
13 a fee of six dollars and twenty-five cents to the clerk. One dollar and
14 twenty-five cents of such fee shall be remitted to the State Treasurer
15 for credit to the Nebraska Retirement Fund for Judges.

16 (3) Upon filing of a claim in the Small Claims Court, the court
17 shall set a time for hearing and shall cause notice to be served upon the
18 defendant. Notice shall be served not less than five days before the time
19 set for hearing. Notice shall consist of a copy of the complaint and a
20 summons directing the defendant to appear at the time set for hearing and
21 informing the defendant that if he or she fails to appear, judgment will
22 be entered against him or her. Notice shall be served in the manner
23 provided for service of a summons in a civil action. If the notice is to
24 be served by certified mail, the clerk shall provide the plaintiff with
25 written instructions, prepared and provided by the State Court
26 Administrator, regarding the proper procedure for service by certified
27 mail. The cost of service shall be paid by the plaintiff, but such cost
28 and filing fee shall be added to any judgment given the plaintiff.

29 (4) The defendant may file a setoff or counterclaim. Any setoff or
30 counterclaim shall be filed and a copy delivered to the plaintiff at
31 least two days prior to the time of trial. If the setoff or counterclaim

1 exceeds the jurisdictional limits of the Small Claims Court as
2 established pursuant to section 25-2802, the court shall cause the entire
3 matter to be transferred to the regular county court docket and set for
4 trial.

5 (5) No prejudgment actions for attachment, garnishment, replevin, or
6 other provisional remedy may be filed in the Small Claims Court.

7 (6) All forms required by this section shall be prescribed by the
8 Supreme Court. The claim form shall provide for the names and addresses
9 of the plaintiff and defendant, a concise statement of the nature,
10 amount, and time and place of accruing of the claim, and an
11 acknowledgment for use by the person in whose presence the claim form is
12 executed and shall also contain a brief explanation of the Small Claims
13 Court procedure and methods of appeal therefrom.

14 (7) For a default judgment rendered by a Small Claims Court (a) the
15 default judgment may be appealed as provided in section 25-2807, (b) if a
16 motion for a new trial, by the procedure provided in sections 25-1142,
17 25-1144, and 25-1144.01, is filed ten days or less after entry of the
18 default judgment, the court may act upon the motion without a hearing, or
19 (c) if more than ten days have passed since the entry of the default
20 judgment, the court may set aside, vacate, or modify the default judgment
21 as provided in section 25-2720.01. Parties may be represented by
22 attorneys for the purpose of filing a motion for a new trial or to set
23 aside, vacate, or modify a default judgment.

24 Sec. 2. Original section 25-2804, Reissue Revised Statutes of
25 Nebraska, is repealed.