

## LEGISLATIVE BILL 1028

Approved by the Governor August 07, 2020

Introduced by Lathrop, 12.

A BILL FOR AN ACT relating to courts; to amend sections 24-1004, 24-1005, 25-2804, and 29-2702, Reissue Revised Statutes of Nebraska, and sections 25-1301 and 25-1301.01, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to records, judgments, and orders; to change provisions relating to actions in Small Claims Court; to change provisions relating to disposition of money received; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 24-1004, Reissue Revised Statutes of Nebraska, is amended to read:

24-1004 The Supreme Court shall provide by rule for the preservation of all records and of all exhibits offered or received in evidence in the trial of any action. When the records of the district court do not show any unfinished matter pending in the action, a judge of the district court if satisfied they are no longer valuable for any purpose may, upon such notice as the judge may direct, order the destruction, return, or other disposition of such exhibits as the judge he deems appropriate when approval is given by the State Records Administrator pursuant to the Records Management Act sections 84-1201 to 84-1220.

Sec. 2. Section 24-1005, Reissue Revised Statutes of Nebraska, is amended to read:

24-1005 The clerk of any district court or of any other court of record may maintain microfilm any court record as a preservation duplicate in the manner provided in section 84-1208. The original record may be destroyed only with the approval of the State Records Administrator pursuant to the Records Management Act sections 84-1201 to 84-1220. The reproduction of the preservation duplicate microfilm shall be admissible as evidence in any court of record in the State of Nebraska.

Sec. 3. Section 25-1301, Revised Statutes Cumulative Supplement, 2018, is amended to read:

25-1301 (1) A judgment is the final determination of the rights of the parties in an action.

(2) Rendition of a judgment is the act of the court, or a judge thereof, in signing a single written document stating all an order of the relief granted or denied in an action.

(3) The entry of a judgment, decree, or final order occurs when the clerk of the court places the file stamp and date upon the judgment, decree, or final order. For purposes of determining the time for appeal, the date stamped on the judgment, decree, or final order shall be the date of entry.

(4) The clerk shall prepare and maintain the records of judgments, decrees, and final orders that are required by statute and rule of the Supreme Court. Whenever any judgment is paid and discharged or when a satisfaction of judgment is filed, the clerk shall enter such fact upon the judgment index.

Sec. 4. Section 25-1301.01, Revised Statutes Cumulative Supplement, 2018, is amended to read:

25-1301.01 Within three working days after the entry of any civil judgment or final order, except judgments by default when service has been obtained by publication or interlocutory orders styled as judgments, the clerk of the court shall send the judgment or final order by United States mail or by service through the court's electronic case management system to each party whose address appears in the records of the action or to the party's attorney or attorneys of record.

Sec. 5. Section 25-2804, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(3) Upon filing of a claim in the Small Claims Court, the court shall set a time for hearing and shall cause notice to be served upon the defendant. Notice shall be served not less than five days before the time set for hearing. Notice shall consist of a copy of the complaint and a summons directing the defendant to appear at the time set for hearing and informing the defendant that if he or she fails to appear, judgment will be entered against him or her.

Notice shall be served in the manner provided for service of a summons in a civil action. If the notice is to be served by certified mail, the clerk shall provide the plaintiff with written instructions, prepared and provided by the State Court Administrator, regarding the proper procedure for service by certified mail. The cost of service shall be paid by the plaintiff, but such cost and filing fee shall be added to any judgment given the plaintiff.

(4) The defendant may file a setoff or counterclaim. Any setoff or counterclaim shall be filed and a copy delivered to the plaintiff at least two days prior to the time of trial. If the setoff or counterclaim exceeds the jurisdictional limits of the Small Claims Court as established pursuant to section 25-2802, the court shall cause the entire matter to be transferred to the regular county court docket and set for trial.

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

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

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

Sec. 6. Section 29-2702, Reissue Revised Statutes of Nebraska, is amended to read:

29-2702 Every judge or clerk of court, upon receiving any money on account of forfeited recognizances, fines, or costs accruing or due to the county or state, shall pay the same to the treasurer of the proper county, except as may be otherwise expressly provided, within thirty ~~ten~~ days from the time of receiving the same. When any money is paid to a judge or clerk of court on account of costs due to individual persons, the same shall be paid to the persons to whom the same are due upon demand ~~therefor~~.

Sec. 7. Original sections 24-1004, 24-1005, 25-2804, and 29-2702, Reissue Revised Statutes of Nebraska, and sections 25-1301 and 25-1301.01, Revised Statutes Cumulative Supplement, 2018, are repealed.