

## LEGISLATIVE BILL 912

Approved by the Governor August 06, 2020

Introduced by Brandt, 32; Briese, 41; Lathrop, 12; Wayne, 13; Williams, 36.

A BILL FOR AN ACT relating to civil procedure; to amend sections 24-734 and 43-2939, Reissue Revised Statutes of Nebraska, and sections 25-1223, 25-1224, 25-1226, 25-1228, and 33-106, Revised Statutes Cumulative Supplement, 2018; to adopt the County Court Expedited Civil Actions Act; to change provisions relating to examination of witnesses by telephonic, videoconferencing, and similar methods; to change provisions relating to discovery, subpoenas, witness fees, docket fees, and Parenting Act mediators; to harmonize provisions; to provide a duty for the Revisor of Statutes; and to repeal the original sections.

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

Section 1. Sections 1 to 9 of this act shall be known and may be cited as the County Court Expedited Civil Actions Act.

Sec. 2. (1) The County Court Expedited Civil Actions Act applies to civil actions in county court in which the sole relief sought is a money judgment and in which the claim of each plaintiff is less than or equal to the county court jurisdictional amount set forth in subdivision (5) of section 24-517, including damages of any kind, penalties, interest accrued before the filing date, and attorney's fees, but excluding prejudgment interest accrued after the filing date, postjudgment interest, and costs.

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

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

Sec. 3. (1) Eligible plaintiffs may elect to proceed under the County Court Expedited Civil Actions Act by certifying that the relief sought meets the requirements of section 2 of this act. The certification must be on a form approved by the Supreme Court, signed by all plaintiffs and their attorneys, if represented, and filed with the complaint. The certification is not admissible to prove a plaintiff's damages in any proceeding.

(2) Except as otherwise specifically provided, the Nebraska laws and court rules that are applicable to civil actions are applicable to actions under the act.

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

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

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

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

(5) A party may assert a counterclaim only if the counterclaim arises out of the same transaction or occurrence as the opposing party's claim. Any such counterclaim is subject to the county court jurisdictional limit on damages under the act, unless the court severs the counterclaim or certifies the action to district court pursuant to section 25-2706 on the grounds that the amount in controversy exceeds the county court jurisdictional limit.

Sec. 4. (1) Except upon agreement of the parties or leave of court granted upon a showing of good cause, all discovery under the County Court Expedited Civil Actions Act must be completed no later than sixty days before trial.

(2) Except upon agreement of the parties or leave of court granted upon a showing of good cause, discovery under the act is subject to the following additional limitations:

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

(b) Each side shall serve no more than ten requests for production on any other side;

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

(d) One deposition of each party may be taken. With regard to corporations, partnerships, voluntary associations, or any other groups or

entities named as a party, the entity or one officer, member, or employee of such entity may be deposed; and

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

(3) Each side is entitled to one expert, except upon agreement of the parties or leave of court granted upon a showing of good cause. A treating health care provider is counted as an expert for purposes of this subsection.

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

Sec. 5. (1) Any party may file any motion permitted under rules adopted by the Supreme Court for pre-answer motions.

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

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

Sec. 7. (1) Parties to an action under the County Court Expedited Civil Actions Act should stipulate to factual and evidentiary matters to the greatest extent possible.

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

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

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

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

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

(3) Except as otherwise specifically provided by the act, the Nebraska Evidence Rules are applicable to actions under the act.

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

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

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

(b) The Supreme Court shall adopt a form for the purposes of subdivision (6)(a) of this section.

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

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

(e) The deposition of the health care provider and the discovery of facts or opinions held by an expert are not counted for purposes of the numerical limits of section 4 of this act.

Sec. 8. The Supreme Court may promulgate rules and forms for actions governed by the County Court Expedited Civil Actions Act, and such rules and forms shall not be in conflict with the act.

Sec. 9. The County Court Expedited Civil Actions Act applies to civil actions filed on or after January 1, 2022.

Sec. 10. Section 24-734, Reissue Revised Statutes of Nebraska, is amended to read:

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

(a) Upon the stipulation of the parties to an action, hear and determine any matter, including the trial of an equity case or case at law in which a

jury has been waived;

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

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

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

(e) Hear and determine cases brought by petition in error or appeal not involving testimony of witnesses by oral examination;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 11. (1) When authorized by rules promulgated by the Supreme Court, the clerk of the district court may issue a subpoena for discovery in Nebraska for a civil proceeding pending in a foreign jurisdiction. Such a subpoena may command a person to testify at a deposition or command a nonparty to provide discovery without a deposition.

(2) The Supreme Court may promulgate rules for subpoenas under this section. The rules may specify the amount of a fee, if any, that must be paid to the clerk of the district court for the issuance of such subpoenas. Any such rules shall not conflict with laws governing such matters.

Sec. 12. Section 25-1223, Revised Statutes Cumulative Supplement, 2018, is amended to read:

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

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

(3) A person before whom a deposition may be taken may issue a deposition

subpoena on behalf of the court in which the action or proceeding is pending. An attorney, as an officer of the court, may issue and sign a deposition subpoena on behalf of the court if the attorney is authorized to practice in the court.

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

(5) Except as provided in subsection (6) of this section, a A trial subpoena that is issued in a civil action or proceeding (a) at the request of an agency of state government or (b) pursuant to section 25-2304 shall contain the following statement: As a witness in [insert name of court], you are entitled to receive a witness fee in the amount of [insert amount from section 33-139] for each day that you are required to be in court and, if you live more than one mile from the courthouse, you are also entitled to receive mileage at the rate that state employees receive. Ask the lawyer or party who subpoenaed you or the clerk of the court for information about what you should do to receive the fees and mileage to which you are entitled.

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

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

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

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

Sec. 13. Section 25-1224, Revised Statutes Cumulative Supplement, 2018, is amended to read:

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

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

Sec. 14. Section 25-1226, Revised Statutes Cumulative Supplement, 2018, is amended to read:

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

(2) A subpoena for a trial must be served at least two days before the day on which the person individual is commanded to appear and testify. A court may shorten the period for service for good cause shown. In determining whether good cause exists, a court may consider all relevant circumstances, including, but not limited to, the need for the testimony, the burden on the person individual, and the reason why the person individual was not subpoenaed earlier.

Sec. 15. Section 25-1228, Revised Statutes Cumulative Supplement, 2018, is amended to read:

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

(2) The person serving the subpoena shall make a return of service stating the name of the person individual served, the date and method of service, and, if applicable, that the required witness fee was served with the subpoena. The return of service must be by affidavit unless the subpoena was served by a

sheriff or constable. If service was made by certified mail, the signed receipt must be attached to the return of service.

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

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

Sec. 16. Section 33-106, Revised Statutes Cumulative Supplement, 2018, is amended to read:

33-106 (1) In addition to the judges' retirement fund fee provided in section 24-703 and the fees provided in section 33-106.03 and except as otherwise provided by law, the fees of the clerk of the district court shall be as provided in this section. follows: There shall be a docket fee of forty-two dollars for each civil and criminal case except:

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

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

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

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

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

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

Sec. 17. Section 43-2939, Reissue Revised Statutes of Nebraska, is amended to read:

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

(2) No mediator who represents or has represented one or both of the parties or has had either of the parties as a client as an attorney or a counselor shall mediate the case, unless such services have been provided to both participants and mediation shall not proceed in such cases unless the prior relationship has been disclosed, the role of the mediator has been made distinct from the earlier relationship, and the participants have been given the opportunity to fully choose to proceed. All other potential conflicts of interest shall be disclosed and discussed before the parties decide whether to proceed with that mediator.

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

(4) The mediator shall facilitate the mediation process. Prior to the

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

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

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

(b) Allegations are made of direct physical or significant emotional harm to a party or to a child that have not been heard and ruled upon by the court; or

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

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

Sec. 18. The Revisor of Statutes shall assign section 11 of this act to Chapter 25, article 12.

Sec. 19. Original sections 24-734 and 43-2939, Reissue Revised Statutes of Nebraska, and sections 25-1223, 25-1224, 25-1226, 25-1228, and 33-106, Revised Statutes Cumulative Supplement, 2018, are repealed.