

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 419

Introduced by Cavanaugh, J., 9.

Read first time January 14, 2021

Committee: Judiciary

1 A BILL FOR AN ACT relating to civil actions; to amend sections 25-21,223,
2 76-1442, and 76-1450, Reissue Revised Statutes of Nebraska; to
3 require appointment of counsel at county expense in eviction
4 proceedings; to define terms; to provide a duty for the Supreme
5 Court; to require notice of the right to counsel in summonses as
6 prescribed; to provide for a fee; to harmonize provisions; and to
7 repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) For purposes of this section:

2 (a) Eviction proceeding means an action for forcible entry and
3 detainer or an action for possession involving a residential tenancy
4 under sections 25-21,219 to 25-21,235, the Uniform Residential Landlord
5 and Tenant Act, or the Mobile Home Landlord and Tenant Act;

6 (b) Landlord includes a landlord as defined in section 76-1410 and a
7 landlord as defined in section 76-1462;

8 (c) Residential tenancy means a tenancy subject to the Uniform
9 Residential Landlord and Tenant Act or the Mobile Home Landlord and
10 Tenant Act or any other residential tenancy;

11 (d) Tenant means a tenant or former tenant of a residential tenancy;
12 and

13 (e) When reference in this section is made to a definition found in
14 both the Uniform Residential Landlord and Tenant Act and the Mobile Home
15 Landlord and Tenant Act, the definition relevant to the type of tenant at
16 issue applies for purposes of this section.

17 (2) At the commencement of any eviction proceeding, the court shall
18 appoint counsel for the tenant unless the tenant is already represented
19 by counsel. The tenant may waive court-appointed counsel or retain the
20 tenant's own counsel. The cost of any court-appointed counsel shall be
21 paid by the county.

22 (3) Counsel appointed pursuant to this section shall apply to the
23 court before which the proceedings were had for fees for services
24 performed. The court upon hearing the application shall fix reasonable
25 fees. The county board of the county wherein the proceedings were had
26 shall allow the account, bill, or claim presented by any attorney for
27 such services in the amount determined by the court. No such account,
28 bill, or claim shall be allowed by the county board until the amount
29 thereof shall have been determined by the court.

30 (4) By July 1, 2022, the Supreme Court shall provide guidelines
31 setting forth standards for all attorneys appointed pursuant to this

1 section. The Supreme Court shall periodically review and maintain such
2 standards.

3 Sec. 2. (1) In addition to all other court costs assessed according
4 to law, an eviction proceeding fee of fifty dollars shall be assessed as
5 costs for each eviction proceeding filed in each county court and
6 district court. The fees shall be remitted to the State Treasurer on
7 forms prescribed by the State Treasurer within ten days after the end of
8 each month. The State Treasurer shall credit the fees to the general fund
9 of the county as provided in section 33-106.02.

10 (2) For purposes of this section, eviction proceeding has the same
11 meaning as in section 1 of this act.

12 Sec. 3. Section 25-21,223, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 25-21,223 (1) The summons shall be issued and directed with a copy
15 of the complaint attached to the summons, shall state the cause of the
16 complaint, the time and place of trial of the action for possession, and
17 the answer day for other causes of action, and shall notify the defendant
18 that if he or she fails to appear, judgment shall be entered against him
19 or her. If the complaint is for an eviction proceeding as defined in
20 section 1 of this act, the summons shall also contain a statement in
21 substantially the following form: "As a residential tenant, you have the
22 right to representation by counsel in eviction proceedings. Counsel will
23 be appointed to represent you, at no cost, at the beginning of eviction
24 proceedings."

25 (2) The summons may be served and returned as provided in sections
26 25-505.01 to 25-516.01, except that the summons shall be served within
27 three days, excluding nonjudicial days, from the date of its issuance and
28 shall be returnable within five days, excluding nonjudicial days, from
29 the date of its issuance. If service cannot be made with reasonable
30 diligence under such sections, service may be made by any person by
31 leaving a copy of the summons at the detained premises and mailing a copy

1 by first-class mail to the defendant's last-known address. The person
2 making the service shall file with the court an affidavit stating with
3 particularity the manner in which he or she made the service and, if
4 service was not made as provided in sections 25-505.01 to 25-516.01, the
5 reasons why service under such sections was unsuccessful.

6 (3) Trial of the action for possession shall be held not less than
7 ten nor more than fourteen days after the date of issuance of the
8 summons.

9 Sec. 4. Section 76-1442, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 76-1442 (1) The summons shall be issued and directed, with a copy
12 of the complaint attached thereto, and shall state the cause of the
13 complaint, the time and place of trial of the action for possession,
14 answer day for other causes of action, and notice that if the defendant
15 fails to appear judgment shall be entered against him or her. The summons
16 shall also contain a statement in substantially the following form: "As a
17 residential tenant, you have the right to representation by counsel in
18 eviction proceedings. Counsel will be appointed to represent you, at no
19 cost, at the beginning of eviction proceedings."

20 (2) The summons may be served and returned as in other cases or by
21 any person, except that the summons shall be served within three days,
22 excluding nonjudicial days, from the date of issuance and shall be
23 returnable within five days, excluding nonjudicial days, from the date of
24 issuance. The person making the service shall file with the court an
25 affidavit stating with particularity the manner in which he or she made
26 the service. If diligent efforts have been made to serve the summons in
27 the manner provided in sections 25-505.01 to 25-516.01 but such efforts
28 were unsuccessful, the summons may be served in the manner provided in
29 section 76-1442.01.

30 Sec. 5. Section 76-1450, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 76-1450 Sections 76-1450 to 76-14,111 and section 6 of this act
2 shall be known and may be cited as the Mobile Home Landlord and Tenant
3 Act.

4 Sec. 6. In any action for forcible entry and detainer or for
5 possession under the Mobile Home Landlord Tenant Act, the summons served
6 upon the defendant shall contain a statement in substantially the
7 following form: "As a residential tenant, you have the right to
8 representation by counsel in eviction proceedings. Counsel will be
9 appointed to represent you, at no cost, at the beginning of eviction
10 proceedings."

11 Sec. 7. Original sections 25-21,223, 76-1442, and 76-1450, Reissue
12 Revised Statutes of Nebraska, are repealed.