

LEGISLATIVE BILL 760

Approved by the Governor May 23, 2003

Introduced by Brashear, 4; Mines, 18; Connealy, 16

AN ACT relating to judicial administration; to amend sections 33-106, 33-138, 42-720, and 48-191, Reissue Revised Statutes of Nebraska, and sections 24-703, 25-21,223, 25-2221, 25-2921, 29-3920, 29-3921, 29-3930, 29-3931, 49-1203, 76-1442, and 83-4,125, Revised Statutes Supplement, 2002; to create a fund; to require continuing education and training; to provide for an advisory committee; to increase and provide for fees; to change judges' retirement provisions; to provide duties for the State Court Administrator; to change powers and duties of the Commission on Public Advocacy; to provide for nonjudicial days; to provide powers for the Chief Justice; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. The Supreme Court Education Fund is created. The State Court Administrator shall administer the fund. The fund shall consist of money remitted pursuant to section 3 of this act. The fund shall only be used to aid in supporting the mandatory training and education program for judges and employees of the Supreme Court, Court of Appeals, district courts, separate juvenile courts, county courts, and Nebraska Probation System as enacted by rule of the Supreme Court. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 2. (1) The Supreme Court may appoint a Judicial Branch Education Advisory Committee.

(2) The Judicial Branch Education Advisory Committee may:

(a) Develop for review by the Supreme Court standards and rules and regulations addressing such issues as the criteria for mandatory education for judges, criteria for approval of qualified activities, reporting requirements, sanctions for noncompliance, exemptions, and confidentiality of records;

(b) Develop for review by the Supreme Court standards and policies for education and training of all nonjudge judicial branch employees, including criteria for approval of qualified activities, reporting requirements, sanctions for noncompliance, and exemptions;

(c) Make recommendations to the State Court Administrator regarding budget requests and pursue grant funding;

(d) Develop for review by the Supreme Court policies regarding funding for travel and other related educational expenses for all employees for both instate and out-of-state travel; and

(e) Participate in additional activities as assigned by the Supreme Court in order to promote excellence in the administration of justice through quality education.

Sec. 3. In addition to all other court costs assessed according to law, a training fee of one dollar shall be taxed as costs for each case filed in each county court and district court, including appeals to such courts, and for each appeal and original action filed in the Court of Appeals and the Supreme Court. The fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of each month. The State Treasurer shall credit the fees to the Supreme Court Education Fund.

Sec. 4. Section 24-703, Revised Statutes Supplement, 2002, is amended to read:

24-703. (1) Each original member shall contribute monthly four percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (1) of section 24-710 has been earned. It shall be the duty of the Director of Administrative Services in accordance with subsection (10) of this section to make a deduction of four percent on the monthly payroll of each original member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. The Director of Administrative Services and the State Treasurer shall credit the four percent as shown on the payroll and the amounts received from the various counties to the fund and remit the same to

the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(2) Each future member shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (2) of section 24-710 has been earned. Any time the maximum benefit is changed, a future member who has previously earned the maximum benefit as it existed prior to the change shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as changed and as limited in subsection (2) of section 24-710 has been earned. It shall be the duty of the Director of Administrative Services to make a deduction of ~~six percent~~ on the monthly payroll of each such future member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. This shall be done each month. The Director of Administrative Services and the State Treasurer shall credit the ~~six percent~~ amount as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(3) A Nebraska Retirement Fund for Judges fee of ~~one dollar~~ five dollars shall be taxed as costs in each civil cause of action, criminal cause of action, traffic misdemeanor or infraction, and city or village ordinance violation filed in the district courts and the county courts. In county courts a sum shall be charged which is equal to ten percent of each fee provided by sections 33-125, 33-126.02, 33-126.03, and 33-126.06. No judges retirement fee shall be charged for filing a report pursuant to sections 33-126.02 and 33-126.06. When collected by the clerk of the district or county court, such fees shall be paid to the director in charge of the judges retirement system on forms prescribed by the board by the clerk within ten days after the close of each calendar quarter. Such director shall promptly thereafter remit the same to the State Treasurer for credit to the fund. No Nebraska Retirement Fund for Judges fee which is uncollectible for any reason shall be waived by a county judge as provided in section 29-2709.

(4) All expenditures from the fund shall be authorized by voucher in the manner prescribed in section 24-713. The fund shall be used for the payment of all annuities and other benefits and for the expenses of administration.

(5) The fund shall consist of the total fund as of December 25, 1969, the contributions of members as provided in this section, all supplementary court fees as provided in subsection (3) of this section, and any required contributions of the state.

(6) Not later than January 1 of each year, the State Treasurer shall transfer to the fund the amount certified by the board as being necessary to pay the cost of any benefits accrued during the fiscal year ending the previous June 30 in excess of member contributions for that fiscal year and court fees as provided in subsection (3) of this section, if any, for that fiscal year plus any required contributions of the state as provided in subsection (9) of this section.

(7) Benefits under the retirement system to members or to their beneficiaries shall be paid from the fund.

(8) Any member who is making contributions to the fund on December 25, 1969, may, on or before June 30, 1970, elect to become a future member by delivering written notice of such election to the board.

(9) Not later than January 1 of each year, the State Treasurer shall transfer to the fund an amount, determined on the basis of an actuarial valuation as of the previous June 30 and certified by the board, to fully fund the unfunded accrued liabilities of the retirement system as of June 30, 1988, by level payments up to January 1, 2000. Such valuation shall be on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board. For the fiscal year beginning July 1, 2002, and each fiscal year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate, plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of July 1, 2002, if any, shall be amortized over a twenty-five-year period. During each

subsequent actuarial valuation, changes in the funded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the Judges Retirement Act, there shall be a supplemental appropriation sufficient to pay for the differences between the actuarially required contribution rate and the rate of all contributions required pursuant to the Judges Retirement Act.

(10) The state or county shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code as defined in section 49-801.01, except that the state or county shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The state or county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state or county shall pick up these contributions by a compensation deduction through a reduction in the compensation of the member. Member contributions picked up shall be treated for all purposes of the Judges Retirement Act in the same manner and to the extent as member contributions made prior to the date picked up.

Sec. 5. Section 25-21,223, Revised Statutes Supplement, 2002, is amended to read:

25-21,223. The summons shall be issued and directed with a copy of the complaint attached to the summons, shall state the cause of the complaint, the time and place of trial of the action for possession, and the answer day for other causes of action, and shall notify the defendant that if he or she fails to appear judgment shall be entered against him or her. The summons may be served and returned as in other cases or by any person, except that the summons shall be served within three days, excluding ~~Saturdays, Sundays, and holidays~~ nonjudicial days, from the date of its issuance and shall be returnable within five days, excluding ~~Saturdays, Sundays, and holidays~~ nonjudicial days, from the date of its issuance. The person making the service shall file with the court an affidavit stating with particularity the manner in which he or she made the service. Trial of the action for possession shall be held not less than ten nor more than fourteen days after the date of issuance of the summons.

Sec. 6. Section 25-2221, Revised Statutes Supplement, 2002, is amended to read:

25-2221. Except as may be otherwise more specifically provided, the period of time within which an act is to be done in any action or proceeding shall be computed by excluding the day of the act, event, or default after which the designated period of time begins to run. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a day during which the offices of courts of record may be legally closed as provided in this section, in which event the period shall run until the end of the next day on which the office will be open.

All courts and their offices may be closed on Saturdays, Sundays, days on which a specifically designated court is closed by order of the Chief Justice of the Supreme Court, and these holidays: New Year's Day, January 1; Birthday of Martin Luther King, Jr., the third Monday in January; President's Day, the third Monday in February; Arbor Day, the last Friday in April; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veterans Day, November 11; Thanksgiving Day, the fourth Thursday in November; the day after Thanksgiving; Christmas Day, December 25; and all days declared by law or proclamation of the Governor to be holidays. Such days shall be designated as nonjudicial days. If any such holiday falls on Sunday, the following Monday shall be a holiday. If any such holiday falls on Saturday, the preceding Friday shall be a holiday. Court offices shall be open on all other days. If the date designated by the state for observance of any legal holiday pursuant to this section, except Veterans Day, is different from the date of observance of such holiday pursuant to a federal holiday schedule, the

federal holiday schedule shall be observed.

Sec. 7. In addition to all other court costs assessed according to law, a dispute resolution fee of seventy-five cents shall be taxed as costs for each case filed in each county court and district court, including appeals to such courts, and for each appeal and original action filed in the Court of Appeals and the Supreme Court. The fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of each month. The State Treasurer shall credit the fees to the Dispute Resolution Cash Fund.

Sec. 8. Section 25-2921, Revised Statutes Supplement, 2002, is amended to read:

25-2921. The Dispute Resolution Cash Fund is created. The State Court Administrator shall administer the fund. The fund shall consist of proceeds received pursuant to subdivision (10) of section 25-2908 and section 7 of this act. The fund shall be used ~~for~~ to supplement the administration of the office and the support of the approved centers. It is the intent of the Legislature that any General Fund money supplanted by the Dispute Resolution Cash Fund may be used for the support and maintenance of the State Library. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 9. Section 29-3920, Revised Statutes Supplement, 2002, is amended to read:

29-3920. The Legislature finds that:

(1) County property owners should be given some relief from the obligation of providing mandated indigent defense services which in most instances are required because of state laws establishing crimes and penalties;

(2) Property tax relief can be accomplished if the state begins to assist the counties with the obligation of providing indigent defense services required by state laws establishing crimes and penalties;

(3) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also increase accountability because the state, which is the governmental entity responsible for passing criminal statutes, will likewise be responsible for paying some of the costs;

(4) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also improve inconsistent and inadequate funding of indigent defense services by the counties;

(5) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also lessen the impact on county property taxpayers of the cost of a high profile death penalty case which can significantly affect the finances of the counties; and

(6) To accomplish property tax relief in the form of the state assisting the counties of Nebraska in providing for indigent defense services, the Commission on Public Advocacy Operations Cash Fund should be established to fund the operation of the Commission on Public Advocacy and to fund reimbursement requests as determined by section 29-3933.

Sec. 10. Section 29-3921, Revised Statutes Supplement, 2002, is amended to read:

29-3921. The Commission on Public Advocacy Operations Cash Fund is created. The fund shall be used for the operations of the commission. The fund shall consist of money remitted pursuant to section ~~29-3931~~ 12 of this act. It is the intent of the Legislature that the commission shall be funded solely from the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Any money in the County Revenue Assistance Fund on April 19, 2002, shall be transferred to the Commission on Public Advocacy Operations Cash Fund.

Sec. 11. Section 29-3930, Revised Statutes Supplement, 2002, is amended to read:

29-3930. The following divisions are established within the commission:

(1) The capital litigation division shall be available to assist in the defense of capital cases in Nebraska, subject to caseload standards of the commission;

(2) The appellate division shall be available to prosecute appeals to the Court of Appeals and the Supreme Court, subject to caseload standards of the commission;

(3) The violent crime and drug defense division shall be available

to assist in the defense of certain violent and drug crimes as defined by the commission, subject to the caseload standards of the commission;

(4) The DNA testing division shall be available to assist in representing persons who are indigent who have filed a motion pursuant to the DNA Testing Act, subject to caseload standards; and

~~(4)~~ (5) The major case resource center shall be available to assist public defenders, contracting attorneys, or court-appointed attorneys with the defense of a felony offense, subject to caseload standards of the commission.

Sec. 12. Section 29-3931, Revised Statutes Supplement, 2002, is amended to read:

~~29-3931.~~ (1) In addition to all other court costs assessed according to law, an indigent defense fee of two dollars and seventy-five cents shall be taxed as costs for each case filed in each county court and district court, including appeals to such courts, and for each appeal and original action filed in the Court of Appeals and the Supreme Court. The fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of the month. The State Treasurer shall credit the fees to the Commission on Public Advocacy Operations Cash Fund. In cases in which the capital litigation division or appellate division has been appointed, the chief counsel shall make a showing to the county or district court for the county in which the prosecution arose regarding the commission's cost of defense. The chief counsel shall consider the complexity of the case, the amount of expenses involved, and the ability of the county to pay the costs, in determining how often to make a showing to the court. A showing shall be made no more than once a month and shall be made once after the case is completed. The cost shall be based upon (a) the actual time spent by commission staff attorneys and their hourly rates of pay, including benefits, (b) a reasonable amount for administrative and support staff time, (c) the actual expenditures for litigation support, such as expert witnesses, depositions, photocopying, printing, and travel and lodging expenses, and (d) a reasonable amount for office overhead, including rent, telephone, and utilities. The cost of defense shall not include any expense incurred by the commission's staff for travel time or mileage between the commission's office and the place where the particular case's venue is had or for lodging and meals when the staff must be away from the office for more than one day. After a hearing, the county or district court shall order the county to pay one-third of the commission's cost of defense. The county shall pay the costs to the commission which shall remit the amount to the State Treasurer for credit to the Commission on Public Advocacy Operations Cash Fund. In cases in which commission staff is using money to represent indigent clients and that money is associated with any federal grant money or state match money, the chief counsel shall only bill counties for actual expenditures for litigation support, such as expert witnesses, depositions, photocopying, printing, and travel and lodging expenses.

(2) In cases under the DNA Testing Act, costs shall be paid as provided in such act.

Sec. 13. Section 33-106, Reissue Revised Statutes of Nebraska, is amended to read:

33-106. (1) In addition to the judges retirement fund fee and the fee 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 follows: There shall be a docket fee of forty dollars for each civil and criminal case except ~~(1)~~ (a) a case commenced by filing a transcript of judgment as hereinafter provided, ~~(2)~~ (b) proceedings under the Nebraska Workers' Compensation Act and the Employment Security Law, when provision is made for the fees that may be charged, and ~~(3)~~ (c) 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-five 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 paper and that the clerk shall be entitled to a fee of fifteen dollars for making a complete record of a case.

(3) The fee for making a complete record of a case shall be taxed as a part of the costs of the case, except when expressly waived by the parties to the action. In a Title IV-D case, in a case filed pursuant to sections 25-2301 to 25-2310, or in a case filed by a county attorney, the fee for

making a complete record of a case shall be waived. 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. 14. Section 33-138, Reissue Revised Statutes of Nebraska, is amended to read:

33-138. (1) Each member of a grand or petit jury in a district court or county court shall receive for his or her services thirty dollars for each day employed in the discharge of his or her duties prior to January 1, 1994, and thirty-five dollars for each such day on or after such date and mileage at the rate provided in section 81-1176 for each mile necessarily traveled. No juror shall be entitled to pay for the days he or she is voluntarily absent or excused from service by order of the court. No juror shall be entitled to pay for ~~Saturdays or holidays~~ nonjudicial days unless actually employed in the discharge of his or her duties as a juror on such days.

(2) In the event that any temporary release from service, other than that obtained by the request of a juror, shall occasion an extra trip or trips to and from the residence of any juror or jurors the court may, by special order, allow mileage for such extra trip or trips.

(3) Payment of jurors for service in the district and county courts shall be made by the county.

Sec. 15. Section 42-720, Reissue Revised Statutes of Nebraska, is amended to read:

42-720. (a) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under the Uniform Interstate Family Support Act.

(b) A support enforcement agency that is providing services to the petitioner as appropriate shall:

(1) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(2) request an appropriate tribunal to set a date, time, and place for a hearing;

(3) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) within five days, exclusive of ~~Saturdays, Sundays, and legal holidays~~ nonjudicial days, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

(5) within five days, exclusive of ~~Saturdays, Sundays, and legal holidays~~ nonjudicial days, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(6) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) The act does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

Sec. 16. Section 48-191, Reissue Revised Statutes of Nebraska, is amended to read:

48-191. Notwithstanding any more general or special law respecting the subject matter hereof, whenever the last day of the period within which a party to an action may file any paper or pleading with the Nebraska Workers' Compensation Court, or take any other action with respect to a claim for compensation, falls on a Saturday, a Sunday, any day on which the compensation court is closed by order of the Chief Justice of the Supreme Court, or on any day declared by statutory enactment or proclamation of the Governor to be a holiday, the next following day, which is not a Saturday, a Sunday, a day on which the compensation court is closed by order of the Chief Justice of the Supreme Court, or a day declared by such enactment or proclamation to be a holiday, shall be deemed to be the last day for filing any such paper or pleading or taking any such other action with respect to a claim for compensation.

Sec. 17. Section 49-1203, Revised Statutes Supplement, 2002, is amended to read:

49-1203. If the date for filing any report, claim, tax return, tax valuation, equalization, or exemption protest, or tax form, petition, appeal,

or statement, or for making any payment, referred to in section 49-1201, falls upon a Saturday, Sunday, nonjudicial day, or legal holiday, such filing or payment shall be considered timely if performed in person or postmarked on the next business day.

Sec. 18. Section 76-1442, Revised Statutes Supplement, 2002, is amended to read:

76-1442. The summons shall be issued and directed, with a copy of the complaint attached thereto, and shall state the cause of the complaint, the time and place of trial of the action for possession, answer day for other causes of action, and notice that if the defendant fails to appear judgment shall be entered against him or her. The summons may be served and returned as in other cases or by any person, except that the summons shall be served within three days, excluding ~~Saturdays, Sundays, and holidays~~ nonjudicial days, from the date of issuance and shall be returnable within five days, excluding ~~Saturdays, Sundays, and holidays~~ nonjudicial days, from the date of issuance. The person making the service shall file with the court an affidavit stating with particularity the manner in which he or she made the service. If diligent efforts have been made to serve the summons in the manner provided in sections 25-505.01 to 25-516.01 but such efforts were unsuccessful, the summons may be served in the manner provided in section 76-1442.01.

Sec. 19. Section 83-4,125, Revised Statutes Supplement, 2002, is amended to read:

83-4,125. For purposes of sections 83-4,124 to 83-4,134:

(1) Criminal detention facility shall mean any institution operated by a political subdivision or a combination of political subdivisions for the careful keeping or rehabilitative needs of adult or juvenile criminal offenders or those persons being detained while awaiting disposition of charges against them. Criminal detention facility shall not include any institution operated by the Department of Correctional Services. Criminal detention facilities shall be classified as follows:

(a) Type I Facilities shall mean criminal detention facilities used for the detention of persons for not more than twenty-four hours, excluding ~~holidays and weekends~~ nonjudicial days;

(b) Type II Facilities shall mean criminal detention facilities used for the detention of persons for not more than ninety-six hours, excluding ~~holidays and weekends~~ nonjudicial days; and

(c) Type III Facilities shall mean criminal detention facilities used for the detention of persons beyond ninety-six hours; and

(2) Juvenile detention facility shall mean an institution operated by a political subdivision or political subdivisions for the secure detention and treatment of persons younger than eighteen years of age, including persons under the jurisdiction of a juvenile court, who are serving a sentence pursuant to a conviction in a county or district court or who are detained while waiting disposition of charges against them. Juvenile detention facility shall not include any institution operated by the department.

Sec. 20. Original sections 33-106, 33-138, 42-720, and 48-191, Reissue Revised Statutes of Nebraska, and sections 24-703, 25-21,223, 25-2221, 25-2921, 29-3920, 29-3921, 29-3930, 29-3931, 49-1203, 76-1442, and 83-4,125, Revised Statutes Supplement, 2002, are repealed.

Sec. 21. Since an emergency exists, this act takes effect when passed and approved according to law.