

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 476**

Introduced by Lautenbaugh, 18.

Read first time January 18, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to civil procedure; to amend sections 25-508.01,  
2 25-509.01, 25-510.02, 25-511.02, 25-512.01, 25-513.01,  
3 and 25-514.01, Reissue Revised Statutes of Nebraska, and  
4 sections 25-505.01, 25-506.01, and 25-507.01, Revised  
5 Statutes Cumulative Supplement, 2010; to change  
6 provisions relating to service and return of summons; to  
7 repeal the original sections; and to declare an  
8 emergency.

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

1           Section 1. Section 25-505.01, Revised Statutes Cumulative  
2 Supplement, 2010, is amended to read:

3           25-505.01 (1) Unless otherwise limited by statute or by  
4 the court, a plaintiff may elect to have service made by any of the  
5 following methods:

6           (a) Personal service which shall be made by leaving the  
7 summons with the individual to be served;

8           (b) Residence service which shall be made by leaving the  
9 summons at the usual place of residence of the individual to be  
10 served, with some person of suitable age and discretion residing  
11 therein;

12           (c) Certified mail service which shall be made by (i)  
13 within ten days of issuance, sending the summons to the defendant by  
14 certified mail with a return receipt requested showing to whom and  
15 where delivered and the date of delivery, and (ii) filing with the  
16 court proof of service with the signed receipt attached; or

17           ~~(d) By depositing with a designated delivery service~~  
18 ~~authorized pursuant to 26 U.S.C. 7502(f)(2) a copy of the summons and~~  
19 ~~complaint, addressed to the party to be served, delivering to the~~  
20 ~~addressee, and obtaining a delivery receipt. As used in this~~  
21 ~~subdivision, delivery receipt includes an electronic or facsimile~~  
22 ~~receipt.~~

23           (d) Designated delivery service which shall be made (i)  
24 within ten days of issuance, sending the summons by a designated  
25 delivery service to the defendant, (ii) by obtaining a signed

1 delivery receipt showing to whom and where delivered and the date of  
2 delivery, and (iii) by filing with the court proof of service with a  
3 copy of the signed delivery receipt attached. As used in this  
4 subdivision, a designated delivery service means a delivery service  
5 designated as such pursuant to 26 U.S.C. section 7502(f) and a signed  
6 delivery receipt includes an electronic or facsimile receipt with an  
7 image of the recipient's signature.

8 (2) Failure to make service by the method elected by the  
9 plaintiff does not affect the validity of the service.

10 (3) The State Court Administrator shall maintain on the  
11 web site of the Supreme Court a list of designated delivery services.

12 Sec. 2. Section 25-506.01, Revised Statutes Cumulative  
13 Supplement, 2010, is amended to read:

14 25-506.01 (1) Unless the plaintiff has elected certified  
15 mail service or designated delivery service, the summons shall be  
16 served by the sheriff of the county where service is made, by a  
17 person authorized by section 25-507 or otherwise authorized by law,  
18 or by a person, corporation, partnership, or limited liability  
19 company not a party to the action specially appointed by the court  
20 for that purpose.

21 (2) Certified mail service or designated delivery service  
22 shall be made by the plaintiff or plaintiff's attorney.

23 Sec. 3. Section 25-507.01, Revised Statutes Cumulative  
24 Supplement, 2010, is amended to read:

25 25-507.01 (1) Within twenty days after the date of issue,

1 the person serving the summons, other than by certified mail service  
2 or designated delivery service, shall make proof of service to the  
3 court stating the time, place, including the address if applicable,  
4 name of the person with whom the summons was left, and method of  
5 service, or return the unserved summons to the court with a statement  
6 of the reason for the failure to serve.

7 (2) When service is by certified mail service or  
8 designated delivery service, the plaintiff or plaintiff's attorney  
9 shall file proof of service within ten days after return of the  
10 signed receipt is received or is available electronically, whichever  
11 occurs first.

12 (3) Failure to make proof of service or delay in doing so  
13 does not affect the validity of the service.

14 Sec. 4. Section 25-508.01, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 25-508.01 (1) An individual party, other than a person  
17 under the age of fourteen years, may be served by personal,  
18 residence, ~~or~~ certified mail, or designated delivery service.

19 (2) A party under the age of fourteen years may be served  
20 by personal, residence, ~~or~~ certified mail, or designated delivery  
21 service upon an adult person with whom the minor resides and who is  
22 the minor's parent, guardian, or person having care of the minor. If  
23 none of these can be found, a party under the age of fourteen years  
24 may be served by personal service.

25 (3) If the person to be served is an incapacitated person

1 for whom a conservator or guardian has been appointed or is confined  
2 in any institution, notice of the service shall be given to the  
3 conservator, guardian, or superintendent or similar official of the  
4 institution. Failure to give such notice does not affect the validity  
5 of the service on the incapacitated person.

6 Sec. 5. Section 25-509.01, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 25-509.01 A corporation may be served by personal,  
9 residence, ~~or~~ certified mail, or designated delivery service upon any  
10 officer, director, managing agent, or registered agent, or by leaving  
11 the process at the corporation's registered office with a person  
12 employed therein, or by certified mail or designated delivery service  
13 to the corporation's registered office.

14 Sec. 6. Section 25-510.02, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 25-510.02 (1) The State of Nebraska, any state agency as  
17 defined in section 81-8,210, and any employee of the state as defined  
18 in section 81-8,210 sued in an official capacity may be served by  
19 leaving the summons at the office of the Attorney General with the  
20 Attorney General, deputy attorney general, or someone designated in  
21 writing by the Attorney General, or by certified mail or designated  
22 delivery service addressed to the office of the Attorney General.

23 (2) Any county, city, or village of this state may be  
24 served by personal, residence, ~~or~~ certified mail, or designated  
25 delivery service upon the chief executive officer, or clerk.

1           (3) Any political subdivision of this state, as defined  
2 in subdivision (1) of section 13-903, other than a county, city, or  
3 village, may be served by personal, residence, ~~or~~ certified mail, or  
4 designated delivery service upon the chief executive officer, clerk,  
5 secretary, or other official whose duty it is to maintain the  
6 official records, or any member of the governing board or body, or by  
7 certified mail or designated delivery service to the principal office  
8 of the political subdivision.

9           Sec. 7. Section 25-511.02, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           25-511.02 A dissolved corporation may be served by  
12 personal, residence, ~~or~~ certified mail, or designated delivery  
13 service upon any appointed receiver. If there is no receiver, a  
14 dissolved corporation may be served by personal, residence, ~~or~~  
15 certified mail, or designated delivery service upon any person who at  
16 the time of dissolution was an officer, director, managing agent, or  
17 registered agent, or upon any officer or director designated in the  
18 last annual report filed with the Secretary of State.

19           Sec. 8. Section 25-512.01, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           25-512.01 A partnership or limited partnership may be  
22 served by personal, residence, ~~or~~ certified mail, or designated  
23 delivery service upon any partner except a limited partner, or by  
24 certified mail or designated delivery service at its usual place of  
25 business, or the process may be left at its usual place of business

1 with an employee of the partnership or limited partnership.

2           Sec. 9. Section 25-513.01, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           25-513.01 An unincorporated association may be served by  
5 personal, residence, ~~or~~ certified mail, or designated delivery  
6 service upon an officer or managing agent, or by certified mail or  
7 designated delivery service to the association at its usual place of  
8 business, or by leaving the process at its usual place of business  
9 with an employee of the unincorporated association.

10           Sec. 10. Section 25-514.01, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12           25-514.01 Any party may be served by personal, residence,  
13 ~~or~~ certified mail, or designated delivery service upon an agent  
14 authorized by appointment or by law to receive service of process.

15           Sec. 11. Original sections 25-508.01, 25-509.01,  
16 25-510.02, 25-511.02, 25-512.01, 25-513.01, and 25-514.01, Reissue  
17 Revised Statutes of Nebraska, and sections 25-505.01, 25-506.01, and  
18 25-507.01, Revised Statutes Cumulative Supplement, 2010, are  
19 repealed.

20           Sec. 12. Since an emergency exists, this act takes effect  
21 when passed and approved according to law.