

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 438**

Introduced by Conrad, 46.

Read first time January 13, 2023

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to civil procedure; to amend sections 25-323
- 2 and 25-331, Reissue Revised Statutes of Nebraska; to provide for
- 3 awards of attorney's fees in appeals; to change provisions and
- 4 modernize language relating to third-party practice; to harmonize
- 5 provisions; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1           Section 1. A statute that authorizes the award of attorney's fees  
2 to a party in a civil action or proceeding also authorizes an appellate  
3 court to award attorney's fees if the party prevails on an appeal from a  
4 judgment or order in the action or proceeding. This section does not  
5 apply if another section of law specifically authorizes or prohibits the  
6 award of attorney's fees on an appeal from such a judgment or order.

7           Sec. 2. Section 25-323, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

9           25-323 The court may determine any controversy between parties  
10 before it when it can be done without prejudice to the rights of others  
11 or by saving their rights; but when a determination of the controversy  
12 cannot be had without the presence of other parties, the court shall ~~must~~  
13 order them to be brought in.

14           ~~Any person whose negligence was or may have been a proximate cause~~  
15 ~~of an accident or occurrence alleged by the plaintiff, other than parties~~  
16 ~~who have been released by the plaintiff and are not subject to suit~~  
17 ~~pursuant to section 25-21,185.11, may be brought into the suit by any~~  
18 ~~party in the manner provided in section 25-331 or 25-705.~~

19           Sec. 3. Section 25-331, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21           25-331 (1)(a) A (1) At any time after commencement of the action, a  
22 defending party may, as a third-party plaintiff, serve may cause a  
23 summons and complaint on a nonparty:

24           (i) Who to be served upon a person not a party to the action who is  
25 or may be liable to the defending party third-party plaintiff for all or  
26 part of the plaintiff's claim against the defending party; or

27           (ii) Whose negligence was or may have been a proximate cause of the  
28 transaction or occurrence that is the subject matter of the plaintiff's  
29 claim and who is not precluded by section 25-21,185.11 from being made a  
30 party third-party plaintiff.

31           (b) The third-party plaintiff shall, by motion, need not obtain the

1 ~~court's leave to make the service~~ if the third-party plaintiff files the  
2 third-party complaint ~~more not later~~ than fourteen ~~ten~~ days after -serving  
3 its filing the original answer. ~~Otherwise the third-party plaintiff must~~  
4 ~~obtain leave of the trial court on motion upon notice to all parties to~~  
5 ~~the action.~~

6 (c) The person served with the summons and third-party complaint,  
7 hereinafter called the third-party defendant, has ~~shall~~ have all the  
8 rights and obligations of a defendant, including those created ~~the rights~~  
9 ~~authorized~~ by this section and by the rules promulgated by the Supreme  
10 Court pursuant to sections 25-801.01 and 25-1273.01.

11 (d) The third-party defendant may assert against the plaintiff any  
12 defense that ~~defenses which~~ the third-party plaintiff has to the  
13 plaintiff's claim. The third-party defendant may also assert ~~any claim~~  
14 against the plaintiff any claim arising out of the transaction or  
15 occurrence that is the subject matter of the plaintiff's claim against  
16 the third-party plaintiff.

17 (e) The plaintiff may assert ~~any claim~~ against the third-party  
18 defendant any claim arising out of the transaction or occurrence that is  
19 the subject matter of the plaintiff's claim against the third-party  
20 plaintiff. ~~The third party defendant shall have all the rights of a~~  
21 ~~defendant including the rights authorized by this section. The court on~~  
22 ~~its own motion, or motion of any party, may move to strike the third-~~  
23 ~~party claim, or for its severance or separate trial if the third party~~  
24 ~~claim should delay trial, might tend to confuse a jury, or in any way~~  
25 ~~jeopardize the rights of the plaintiff.~~

26 (f) A defending party may assert against the third-party defendant a  
27 claim that the third-party defendant is liable to the defending party for  
28 all or part of the claim against the defending party.

29 (g) A third-party defendant ~~or subsequent defendants~~ may bring in a  
30 nonparty if subdivision (1)(a) of this section would allow a defending  
31 party to do so proceed under this section.

1            (h) Any party may move to strike the third-party claim, to sever it,  
2 or try it separately.

3            (2) When a claim counterclaim is asserted against a plaintiff, the  
4 plaintiff may bring in a nonparty if subdivision (1)(a) of cause a third  
5 party to be brought in under circumstances which under this section would  
6 allow a defending party entitle a defendant to do so.

7            Sec. 4.    Original sections 25-323 and 25-331, Reissue Revised  
8 Statutes of Nebraska, are repealed.