

LEGISLATIVE BILL 77

Approved by the Governor February 20, 1987

Introduced by Hefner, 19; L. Johnson, 15

AN ACT relating to Small Claims Court; to amend sections 24-523, 24-525, and 24-536, Reissue Revised Statutes of Nebraska, 1943, and section 24-524, Revised Statutes Supplement, 1986; to authorize the acknowledgment of claim forms by additional persons; to change provisions relating to transfer of cases from Small Claims Court to the regular docket of the county court; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 24-523, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-523. (1) Parties in the Small Claims Court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity.

(2) No party shall be represented by an attorney in the Small Claims Court except as provided in section 24-525.

(3) An individual shall represent himself or herself in the Small Claims Court. A partnership shall be represented by a partner or one of its employees. A union shall be represented by a union member or union employee. A corporation shall be represented by one of its employees. An association shall be represented by one of its members or by an employee of the association. Any other kind of organization or entity shall be represented by one of its members or employees.

(4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the Small Claims Court.

(5) No party may file an assigned claim in the Small Claims Court.

(6) No party shall file more than two claims within any calendar week nor more than ten claims in any calendar year in the Small Claims Court.

(7) Notwithstanding any other provision of this section, an executor or administrator a personal

representative of a decedent's estate, a guardian, or a conservator may be a party in the Small Claims Court.

Sec. 2. That section 24-524, Revised Statutes Supplement, 1986, be amended to read as follows:

24-524. (1) Actions in the Small Claims Court shall be commenced by the filing of a claim, personally or by mail, by the plaintiff on a form provided by the clerk of a county court. The claim form shall be executed by the plaintiff in the presence of a judge, a clerk or deputy or assistant clerk of a county court, or a notary public of the State of Nebraska or other person authorized by law to take acknowledgments. If not filed in person, the claim form and appropriate fees shall be mailed by the plaintiff to the court of proper jurisdiction.

(2) At the time of the filing of the claim, the plaintiff shall pay a fee of five dollars to the clerk.

(3) Upon filing of a claim in the Small Claims Court, the court shall set a time for hearing and shall cause notice to be served upon the defendant. Notice shall be served not less than five days before the time set for hearing. Notice shall consist of a copy of the complaint and a summons directing the defendant to appear at the time set for hearing and informing the defendant that if he or she fails to appear, judgment will be entered against him or her. Notice shall be served in the manner provided for service of a summons in a civil action, except that service by certified mail shall be made by the clerk. The cost of service shall be paid by the plaintiff, but such cost and filing fee shall be added to any judgment given the plaintiff.

(4) The defendant may file a setoff or counterclaim. Any setoff or counterclaim shall be filed and a copy delivered to the plaintiff at least two days prior to the time of trial. If the setoff or counterclaim exceeds the jurisdictional limits of the Small Claims Court as established pursuant to section 24-522, the court shall cause the entire matter to be transferred to the regular county court docket and set for trial.

(5) No prejudgment actions for attachment, garnishment, replevin, or other provisional remedy may be filed in the Small Claims Court.

(6) All forms required by this section shall be prescribed by the Supreme Court. The claim form shall provide for the names and addresses of the plaintiff and defendant, a concise statement of the nature, amount, and time and place of accruing of the

claim, and an acknowledgement for use by the person in whose presence the claim form is executed and shall also contain a brief explanation of the Small Claims Court procedure and methods of appeal therefrom.

(7) Judgments rendered against a defendant in his or her absence may not be set aside but may only be appealed as governed by section 24-527.

Sec. 3. That section 24-525, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-525. All matters in the Small Claims Court shall be tried to the court without a jury. Any defendant in an action or such defendant's attorney may transfer the case to the regular docket of the county court by giving notice to the court at least two days prior to the time set for the hearing. Upon ~~upon~~ such notice the case shall be transferred to the regular docket of the county court. At the same time as such notice is given to transfer the case, any defendant or such defendant's attorney may demand trial by jury, and the Small Claims Court shall forward the demand to the county court. The party causing the transfer of a case from the Small Claims Court to the regular docket shall pay as a fee the difference between the fee for filing a claim in Small Claims Court and the fee for filing a claim on the regular docket.

In any action transferred to the regular docket there shall be no further pleadings, demurrers, motions challenging pleadings, or discovery unless ordered by the court upon a showing that any such procedure is necessary to the prompt and just determination of the action.

Sec. 4. That section 24-536, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-536. Either party to any case in county court, except criminal cases arising under city or village ordinances, traffic infractions, ~~and~~ other infractions, and ~~except~~ any matter arising under ~~the provisions of~~ the Nebraska Probate Code, may demand a trial by jury. In civil cases, the demand ~~must~~ shall be in writing and ~~must~~ shall be filed on or before answer day ~~except as otherwise provided in section 24-525.~~ All provisions of law relating to juries in the district courts shall apply to juries in the county courts, and the district court jury list shall be used, except that juries in the county courts shall consist of six persons.

Sec. 5. That original sections 24-523,

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24-525, and 24-536, Reissue Revised Statutes of
Nebraska, 1943, and section 24-524, Revised Statutes
Supplement, 1986, are repealed.