

LEGISLATIVE BILL 233

Approved by the Governor February 14, 1989

Introduced by Chizek, 31

AN ACT relating to fees; to amend sections 33-123, 33-124, 33-125, 33-126.02, 33-126.03, 33-126.04, 33-126.05, 33-126.06, and 81-1429, Reissue Revised Statutes of Nebraska, 1943, and section 24-703, Revised Statutes Supplement, 1988; to change provisions relating to judges retirement fees; to change provisions relating to county court fees for criminal and civil matters, probate, guardianships, conservatorships, custodians, inheritance tax proceedings, and other proceedings as prescribed; to eliminate a provision relating to fees for testamentary trusts; to harmonize provisions; and to repeal the original sections, and also section 33-126, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 24-703, Revised Statutes Supplement, 1988, be amended to read as follows:

24-703. (1) Each original member shall contribute monthly four percent of his or her monthly salary 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 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 and cities to the fund and remit the same to the executive officer 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 salary to the fund until the maximum benefit 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 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 as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the executive officer 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 shall be taxed as costs in each civil and cause of action, criminal cause of action, traffic misdemeanor or infraction, and city or village ordinance violation or proceeding filed in the district courts and the county courts. In , and in county courts a sum shall be charged which is equal to ten percent of each fee provided by sections 33-125, 33-126, and 33-126.02, 33-126.03, and 33-126.06. No judges retirement fee shall be charged except on the fees provided for in section 33-125 for the dismissal of a cause and for filing a report pursuant to sections 33-126 and 33-126.02 and 33-126.06. A similar fee shall be charged for prosecutions of any city ordinance regulating nonmoving traffic violations, to be credited to the costs of a violations bureau when established by a local governing body, except when such cause, proceeding, or defendant has been dismissed by the court. When collected by the clerk of the district or county court, such fees shall be paid to the executive officer 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 executive officer shall promptly thereafter remit the same to the state treasury. Upon the receipt thereof, the State Treasurer shall credit the same to the

Nebraska Retirement Fund for Judges.

(4) All expenditures from the Nebraska Retirement Fund for Judges 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 described above, 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 system by level payments up to January 1, 2000.

(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 United States Internal Revenue Code, 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 United States Internal Revenue 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 salary deduction either through a reduction in the salary of the member or a combination of a reduction in salary and offset against a future salary increase. Member contributions picked up shall be treated for all purposes of sections 24-701 to 24-714 in the same manner and to the extent as member contributions made prior to the date picked up.

Sec. 2. That section 33-123, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

33-123. The county court shall be entitled to the following fees in civil matters: For any and all services rendered up to and including the judgment or dismissal of the action, eighteen dollars; and for all orders, after judgment, including writs of execution, writs of restitution, garnishment, and examination in aid of execution, and taking and approving any recognizance or bond, five dollars each.

Sec. 3. That section 33-124, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

33-124. In criminal matters, including preliminary and juvenile hearings, the county judge court shall receive, the following fees: For for any and all services rendered up to and including the judgment or dismissal of the action and the issuance of mittimus or discharge to the jailer, the sum of eighteen dollars. ; for all orders after judgment and taking and approving any recognizance or bond, five dollars each.

Sec. 4. That section 33-125, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

33-125. In probate matters the county court shall be entitled to receive the following fees: (1) For (a) the informal probate of a will or informal appointment of a personal representative; or both; or (b) the determination of intestacy and heirs without requesting the appointment of an administrator; or (c) summary proceedings in small estates under sections 30-24,127 and 30-24,128; or (d) adjudication of a contested claim; or (e) probate proceedings commenced and closed informally, twenty dollars, for each petition or application filed within the informal proceedings, twenty dollars, and for any other proceeding under the Nebraska Probate Code for which no court fee is established by statute, twenty dollars. The fees assessed under this subdivision shall not exceed the fees which would be assessed for a formal probate under

subdivision (2) of this section; and (2) for all proceedings relating to the formal settlement of the estate of a deceased person where probate proceedings commenced or closed formally: When the value does not exceed one thousand dollars, twenty dollars; where when the value exceeds one thousand dollars and is not more than two thousand dollars, thirty dollars; where when the value exceeds two thousand dollars and is not more than five thousand dollars, fifty dollars; where when the value exceeds five thousand dollars and is not more than ten thousand dollars, seventy dollars; where when the value exceeds ten thousand dollars and is not more than twenty-five thousand dollars, eighty dollars; where when the value exceeds twenty-five thousand dollars and is not more than fifty thousand dollars, one hundred dollars; where when the value exceeds fifty thousand dollars and is not more than seventy-five thousand dollars, one hundred twenty dollars; where when the value exceeds seventy-five thousand dollars and is not more than one hundred thousand dollars, one hundred sixty dollars; where when the value exceeds one hundred thousand dollars and is not more than one hundred and twenty-five thousand dollars, two hundred and twenty dollars; where when the value exceeds one hundred and twenty-five thousand dollars and is not more than one hundred and fifty thousand dollars, two hundred and fifty dollars; where when the value exceeds one hundred and fifty thousand dollars and is not more than one hundred and seventy-five thousand dollars, two hundred and seventy dollars; where when the value exceeds one hundred and seventy-five thousand dollars and is not more than two hundred thousand dollars, three hundred dollars; where when the value exceeds two hundred thousand dollars and is not more than three hundred thousand dollars, three hundred and fifty dollars; where when the value exceeds three hundred thousand dollars and is not more than four hundred thousand dollars, four hundred dollars; where when the value exceeds four hundred thousand dollars and is not more than five hundred thousand dollars, five hundred dollars; where when the value exceeds five hundred thousand dollars and is not more than seven hundred and fifty thousand dollars, six hundred dollars; where when the value exceeds seven hundred and fifty thousand dollars and is not more than one million dollars, seven hundred dollars; where when the value exceeds one million dollars and is not more than two million five hundred thousand dollars, eight hundred dollars; where when the value exceeds two million five hundred thousand dollars

and is not more than five million dollars, one thousand dollars; and on all estates where when the value exceeds five million dollars, one thousand five hundred dollars.

The above fees prescribed in subdivision (2) of this section shall be based on the gross value of the estate, including both real and personal property in the State of Nebraska at the time of death. The gross value shall mean the actual value of the estate less liens and shall be determined as of the time of the death. Such and joint tenancy property. Formal fees shall be charged in full for any and all services to be performed by the court, in the settlement of an estate wherein no contest arises and no additional fees shall be charged for services performed in connection with petitions, hearing, and orders in the course of such administration. The same shall include court shall provide one certified copy of each order or instrument made for record in the office of the county clerk or register of deeds letters of appointment without charge. In other cases where it shall be when it is necessary to copy instruments, the county court shall be allowed the fees provided in section 33-126.05. There shall be credited against the fees specified in subdivision (2) of this section any fees previously paid for probate matters relating to the estate of such deceased person. In all estates in which it becomes necessary to reappoint an executor, administrator, or personal representative after his or her authority to act terminates or appoint a special administrator, twenty dollars shall be allowed for making such appointment. In all cases where when a petition for probate of will or appointment of an administrator, special administrator, personal representative, guardian, or trustee or any other petition for an order in probate matters is filed and no appointment is made or order entered and the cause is dismissed, the fee shall be ten dollars. In formal proceedings pursuant to the provisions of Chapter 30, article 25, the fees provided under this section shall be based upon the value of all property present in Nebraska at the time of death. No fee shall be charged for filings in probate matters in the absence of a request for a court order or other court proceedings thereon. All proceedings which are commenced as formal proceedings or which are determined by the court to be formal proceedings shall be subject to the fees prescribed in subdivision (2) of this section. A determination of inheritance tax in an estate proceeding which is otherwise informal shall not render the proceeding formal.

Sec. 5. That section 33-126.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

33-126.02. In matters of guardianship and conservatorship, the county court shall be entitled to receive the following fees: Upon the filing of a petition for the appointment of a guardian, fifteen twenty dollars; upon the filing of a petition for the appointment of a conservator, and when the gross value of the conservatorship estate does not exceed twenty thousand dollars, fifteen twenty dollars; upon the filing of one petition for a consolidated appointment of both a guardian and conservator, twenty dollars; and when the gross value thereof exceeds twenty thousand dollars, seventy-five dollars; for the appointment of a successor guardian or conservator, fifteen twenty dollars; for the appointment of a temporary guardian or temporary or special conservator, twenty; fifteen dollars; and for proceedings for a protective order in the absence of a guardianship or conservatorship, fifteen twenty dollars. If there is more than one ward listed in a petition for appointment of a guardian or conservator or both, only one filing fee shall be assessed. ; and for closing guardianship or conservatorship estate as provided in sections 30-2614 and 30-2659, fifteen dollars. The fees relating to conservatorships shall be based on the gross value of the conservatorship estate including both real and personal property. The gross value shall mean the actual value of the estate less liens and shall be determined as of the time of applying for a conservator. If the gross value of such estate, originally being twenty thousand dollars or less, should thereafter exceed the value of twenty thousand dollars while the conservatorship is pending, the county court shall be entitled to an additional fee of sixty dollars. While such guardianship or conservatorship is pending, in such court and reports are filed or other matters relating thereto come before the court therein, the court shall receive five dollars for filing and recording each report. ; five dollars. When the appointment of a custodian as provided for in the Nebraska Uniform Gifts to Minors Act is made, the county court shall be entitled to receive a fee of thirty twenty dollars, when the assets of the custodian do not exceed twenty thousand dollars and a fee of seventy-five dollars when the assets of the custodian exceed twenty thousand dollars.

Sec. 6. That section 33-126.03, Reissue

Revised Statutes of Nebraska, 1943, be amended to read as follows:

33-126.03. In all matters for the determination of inheritance tax under the provisions of Chapter 77, article 20, the county court shall be entitled to receive fees of ~~fifteen~~ twenty dollars. Fees under this section shall not be charged if fees have been imposed pursuant to subdivision (2) of section 33-125. Except in cases instituted by the county attorney, such fee shall be paid by the person petitioning for such determination.

Sec. 7. That section 33-126.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

33-126.04. In all estate, trust, guardianship, and conservatorship matters, in case of contest, the county court shall be allowed for each day or fraction thereof consumed in such contest, the sum of ~~twenty~~ fifteen dollars; for taking ~~dedimus~~ prove will; ~~fifteen~~ dollars. In all matters of adoption, for each child adopted five dollars shall be allowed the court for the entire proceeding.

Sec. 8. That section 33-126.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

33-126.05. The county court shall be allowed the following miscellaneous fees: For delayed birth registration, for the entire proceedings, ten dollars; for ~~adoptive~~ birth registration, for the entire proceedings, five dollars; for taking and approving any ~~recognizance or bond~~ for each of the same, five dollars; for filing, approving, and recording official bonds or bonds of abstracters, five dollars; for depositing a will for safekeeping and indexing the same, two dollars; and for each use of any credit card authorized by the court for any payment, three dollars. The legal fees for printing notices required by law to be printed in some newspaper shall be allowed in addition to the fees allowed in this section. For the following services performed by the county court, it shall be entitled to receive the following fees: For a temporary restraining order in injunction, in the absence of the district judge, five dollars; for appointment of appraisers in condemnation proceedings, fifteen dollars, plus one dollar for each additional parcel of land included in the petition when there is more than one; and for certifying a report of appraisers to the county clerk or register of deeds and making a transcript of the same to the district court, one dollar per page. In addition to

the fees provided in sections 33-123 to 33-125, the county court shall be entitled to the following fees: For providing transcripts, copies, and certified copies and taking depositions photocopies, twenty-five cents per page; and for executing a certificate and affixing the seal, one dollar; ~~for comparing copies presented for certification, which copies are not prepared by the county court or its employees, a fee at a rate of one dollar per page; and in any other matter in which there is not a fee specifically provided for in this section, the fees of the clerk of the district court, as authorized by law for similar services, shall be collected.~~

Sec. 9. That section 33-126.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

33-126.06. The county court shall be entitled to collect the following fees: For the registration of any trust, whether testamentary or not, ~~fifteen~~ twenty dollars; for each proceeding initiated in county court concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trusts, ~~fifteen~~ twenty dollars; for the appointment of a successor trustee, twenty dollars; and for filing and recording each report, five dollars.

Sec. 10. That section 81-1429, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1429. A Law Enforcement Improvement Fund fee of two dollars shall be taxed as costs in each criminal proceeding, including traffic violations infractions and misdemeanors, filed in all courts of this state for violations of state law or city or village ordinance ordinances. ~~No~~ PROVIDED, that no such fee shall be collected for nonmoving traffic violations handled by a violations bureau established by a local governing body; and no such fee shall be collected in any juvenile court proceeding in any court where the proceeding or defendant has been dismissed by the court or when waived under section 29-2709. Such fee shall be paid to the State Treasurer on forms prescribed by the State Treasurer within ten days of the close of each calendar quarter. The State Treasurer shall credit the money to the Law Enforcement Improvement Fund.

Sec. 11. That original sections 33-123, 33-124, 33-125, 33-126.02, 33-126.03, 33-126.04, 33-126.05, 33-126.06, and 81-1429, Reissue Revised

Statutes of Nebraska, 1943, and section 24-703, Revised Statutes Supplement, 1988, and also section 33-126, Reissue Revised Statutes of Nebraska, 1943, are repealed.