

## LEGISLATIVE BILL 234

Approved by the Governor March 25, 1998

Introduced by Brashear, 4; Abboud, 12

AN ACT relating to civil procedure; to amend sections 25-311, 25-320, 25-701, 25-1227, 25-1330, 25-21,159, and 25-21,180, Reissue Revised Statutes of Nebraska, and section 25-2704, Revised Statutes Supplement, 1997; to change and eliminate provisions relating to joinder; to authorize county courts to compel attendance of witnesses; to change pleading procedure in county courts; to provide for and eliminate provisions regarding setting aside default judgments; to change summary judgment procedure; to eliminate notice to the Attorney General regarding a declaratory judgment on the validity of a municipal ordinance or franchise; to harmonize provisions; to repeal the original sections; and to outright repeal sections 25-317, 25-702, and 25-2720, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 25-311, Reissue Revised Statutes of Nebraska, is amended to read:

25-311. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action, having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except as otherwise provided in this chapter.

Sec. 2. Section 25-320, Reissue Revised Statutes of Nebraska, is amended to read:

25-320. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may, all or any of them, be included in the same action, at the option of the plaintiff.

Sec. 3. Section 25-701, Reissue Revised Statutes of Nebraska, is amended to read:

25-701. The plaintiff may unite several causes of action in the same petition, whether they be such as have heretofore been denominated legal or equitable, or both, when they are included in any of the following classes: (1) The same transaction or transactions connected with the same subject of action; (2) contracts, express or implied; (3) injuries with or without force to person and property or either; (4) injuries to character; (5) claims to recover possession of personal property, with or without damages for the withholding thereof; (6) claims to recover real property with or without damages for the withholding thereof and the rents and profits of the same; and (7) claims against a trustee by virtue of a contract, or by operation of law. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim may join, either as independent or as alternate claims, as many claims, legal or equitable, as the party has against an opposing party.

Sec. 4. (1) This section applies when parties or causes of action are joined in accordance with section 25-311, 25-320, or 25-701.

(2) A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief and against one or more of the defendants according to their respective liabilities.

(3) The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party and may order separate trials or make other orders to prevent delay or prejudice.

(4) Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with section 25-311 or 25-320.

(5) Misjoinder of parties is not ground for dismissal of an action.

Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

(6) When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(7) When a court has ordered a final judgment under the conditions stated in subsection (6) of this section, the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

Sec. 5. Section 25-1227, Reissue Revised Statutes of Nebraska, is amended to read:

25-1227. (1) Witnesses in civil cases cannot be compelled to attend a trial in the district court out of the state where they are served, ~~nor~~ or at a distance of more than one hundred miles from the place of their residence, or from the place where they are served with a subpoena, unless within the same county. Witnesses in civil cases shall not be obliged to attend a deposition outside the county of their residence, or outside the county where the subpoena is served.

(2) A district court or county court judge, for good cause shown, may, upon deposit with the clerk of the court of sufficient money to pay the legal fees and mileage and reasonable expenses for hotel and meals of such a witness who attends at points so far removed from his or her residence as to make it reasonably necessary that such expenses be incurred, order a subpoena to issue requiring the trial attendance, but excluding a deposition appearance, of such witness from a greater distance within the state than that provided in subsection (1) of this section. Mileage shall be computed at the rate provided in section 81-1176, ~~for state employees.~~ The subpoena shall show that it is issued under the provisions hereof. After the appearance of such witness in response to any such subpoena, the judge shall enter an order directing the payment to the witness from such deposit of such legal fees, mileage, and the actual expenses for hotel and meals incurred by such witness. If such deposit is not adequate for such purpose, the judge shall direct the party procuring the issuance of such subpoena to pay to such witness the deficiency.

(3) No other subpoena except from the district court or county court can compel a witness to attend for examination on the trial of a civil action, except in the county of his or her residence, nor to attend to give his or her deposition out of the county where he or she resides, or where he or she may be when the subpoena is served upon him or her.

Sec. 6. Section 25-1330, Reissue Revised Statutes of Nebraska, is amended to read:

25-1330. A party seeking to recover in district court upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the filing of answer ~~expiration of thirty days from the service of process on the opposing party~~ or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his or her favor upon all or any part thereof.

Sec. 7. Section 25-21,159, Reissue Revised Statutes of Nebraska, is amended to read:

25-21,159. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard. ~~If a~~ ~~and if the statute, ordinance or franchise~~ is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard.

Sec. 8. Section 25-21,180, Reissue Revised Statutes of Nebraska, is amended to read:

25-21,180. As used in sections 25-224, 25-702, and 25-21,180 to

25-21,182, unless the context otherwise requires: Product liability action shall mean any action brought against a manufacturer, seller, or lessor of a product, regardless of the substantive legal theory or theories upon which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formulation, installation, preparation, assembly, testing, packaging, or labeling of any product, or the failure to warn or protect against a danger or hazard in the use, misuse, or intended use of any product, or the failure to provide proper instructions for the use of any product.

Sec. 9. Section 25-2704, Revised Statutes Supplement, 1997, is amended to read:

25-2704. In any civil action in county court, the summons, pleadings, and time for filings shall be ~~returnable ten days after the commencement of the action~~ the same as provided for civil actions in district court. The summons shall be returnable twenty days after the date of issue as provided in section 25-507.01. The answer or demurrer of the defendant shall be filed within ~~twenty~~ thirty days after service of the summons and petition or completion of service by publication, whichever is later, as provided in section 25-821. The reply or demurrer of the plaintiff shall be filed within fifteen days after the filing of the answer as provided in section 25-821. The court, for good cause shown, may extend the time for filing an answer or reply. The case shall stand for trial at the earliest available time on the court docket after the issues therein are or, according to the times fixed for pleading, should have been made up.

Sec. 10. The county court shall have the power to set aside default judgments and to vacate or modify its own judgments or orders after the term at which such judgments or orders were made in the same manner as provided for actions filed in the district court.

Sec. 11. Original sections 25-311, 25-320, 25-701, 25-1227, 25-1330, 25-21,159, and 25-21,180, Reissue Revised Statutes of Nebraska, and section 25-2704, Revised Statutes Supplement, 1997, are repealed.

Sec. 12. The following sections are outright repealed: Sections 25-317, 25-702, and 25-2720, Reissue Revised Statutes of Nebraska.