

LEGISLATIVE BILL 921

Approved by the Governor March 21, 2000

Introduced by Brashear, 4

AN ACT relating to court procedure; to amend sections 11-124, 25-208, 25-525, 25-1142, 25-1273.01, 25-1315.02, 25-1515, 25-1517, 25-1542, 25-1804, 25-2002, 25-2008, 25-21,130, 25-21,167, 25-21,217, 25-21,220, 25-21,230, 25-2728, 25-2733, 25-2804, 27-802, 29-2525, 42-372, 42-372.01, 45-103, and 76-718, Reissue Revised Statutes of Nebraska, sections 25-2001, 29-117, and 29-825, Revised Statutes Supplement, 1998, and sections 25-705, 25-1912, 25-1931, and 25-2729, Revised Statutes Supplement, 1999; to change and eliminate provisions relating to new trials, judgments, statute of limitations, notice, discovery, motions, and appeals; to harmonize provisions; to repeal the original sections; and to outright repeal sections 25-1143, 25-1145, 25-1302, and 25-2003, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 11-124, Reissue Revised Statutes of Nebraska, is amended to read:

11-124. If any such corporation ~~fail, neglect, or refuse fails, neglects, or refuses~~ to pay any fine, judgment, or decree rendered against it upon any such recognizance, stipulation, bond, or undertaking, from which no appeal, writ of error, or supersedeas ~~shall have been~~ is taken for ninety days after the ~~rendition~~ entry of such judgment or decree, it shall forfeit all rights to do business in this state until such judgment or decree ~~be~~ is fully paid or satisfied.

Sec. 2. Section 25-208, Reissue Revised Statutes of Nebraska, is amended to read:

25-208. The following actions can only be brought within the periods stated in this section: Within one year, an action for libel, or slander, ~~; assault and battery, false imprisonment, or malicious prosecution or an action upon a statute for a penalty or forfeiture,~~ but if the statute giving such action prescribes a different limitation, the action may be brought within the period ~~so limited,~~ and within two years, an action for malpractice which is not otherwise specifically limited by statute.

In the absence of any other shorter applicable statute of limitations, any action for the recovery of any excise or other tax which has been collected under any statute of the State of Nebraska and which has been finally adjudged to be unconstitutional shall be brought within one year after the final decision of the court declaring it to be unconstitutional. This section shall not apply to any action for the recovery of a property tax.

The changes made to this section by this legislative bill shall apply to causes of action accruing on and after the effective date of this act.

Sec. 3. Section 25-525, Reissue Revised Statutes of Nebraska, is amended to read:

25-525. A party against whom a judgment or order has been rendered without other service than by publication in a newspaper, may, at any time within five years after the date of entry of the judgment or order, have the same opened, ~~and be let in to defend, before to allow the applicant to appear in court and make a defense.~~ Before the judgment or order shall be ~~is~~ opened, the applicant shall give notice to the adverse party of ~~his~~ the intention to make such application, and shall file a full answer to the petition, pay all costs, if the court requires them to be paid, and make it appear to the satisfaction of the court, by affidavit, that during the pendency of the action ~~he~~ the applicant had no actual notice thereof in time to appear in court and make ~~his~~ a defense. ~~The~~ ~~;~~ ~~but~~ ~~the~~ title to any property, the subject of the judgment or order sought to be opened, which by it, or in consequence of it, ~~shall have~~ has passed to a purchaser in good faith, shall not be affected by any proceedings under this section, nor shall ~~they~~ the proceedings affect the title of any property sold before judgment under an attachment. The adverse party, on the hearing of an application to open a judgment or order, as provided by this section, shall be allowed to present counter-affidavits, to show that during the pendency of the action the applicant had notice thereof in time to appear in court and make ~~his~~ a defense.

Sec. 4. Section 25-705, Revised Statutes Supplement, 1999, is amended to read:

25-705. (1) This section applies when an action involves multiple parties or more than one cause of action.

(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 25-1142, Reissue Revised Statutes of Nebraska, is amended to read:

25-1142. A new trial is a reexamination in the same court of an issue of fact after a verdict by a jury, report of a referee, or a trial and decision by the court. The former verdict, report, or decision shall be vacated and a new trial granted on the application of the party aggrieved, for any of the following causes, affecting materially the substantial rights of such party: (1) Irregularity in the proceedings of the court, jury, referee, or prevailing party, or any order of ~~this the~~ court or referee, or abuse of discretion, by which the party was prevented from having a fair trial; (2) misconduct of the jury or prevailing party; (3) accident or surprise, which ordinary prudence could not have guarded against; (4) excessive damages, appearing to have been given under the influence of passion or prejudice; (5) error in the assessment of the amount of recovery, whether too large or too small, ~~where~~ if the action is upon a contract, or for the injury or detention of property; (6) that the verdict, report, or decision is not sustained by sufficient evidence, or is contrary to law; (7) newly discovered evidence, material for the party applying, which ~~he~~ the moving party could not, with reasonable diligence, have discovered and produced at the trial; and (8) error of law occurring at the trial and excepted to by the party making the application.

Sec. 6. A motion for a new trial shall be filed no later than ten days after the entry of the judgment.

Sec. 7. A motion to alter or amend a judgment shall be filed no later than ten days after the entry of the judgment.

Sec. 8. Section 25-1273.01, Reissue Revised Statutes of Nebraska, is amended to read:

25-1273.01. The Supreme Court shall promulgate rules of procedure for discovery in civil cases, which rules shall not be in conflict with laws governing such matters. Rules which provide for the admissibility of depositions shall not be considered as conflicting with the Nebraska Evidence Rules.

Sec. 9. Section 25-1315.02, Reissue Revised Statutes of Nebraska, is amended to read:

25-1315.02. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the

court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. ~~Within ten days after the reception of a verdict~~ No later than ten days after the entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with ~~his~~ the moving party's motion for a directed verdict. ~~If \neq or if a verdict was~~ is not returned, ~~such party,~~ within ten days after the jury ~~has been~~ is discharged, ~~a party who has moved for a directed verdict~~ may move for judgment in accordance with ~~his~~ the moving party's motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. ~~If a verdict was returned judgment was entered,~~ the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned, the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

Sec. 10. (1) 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.

(2) When a court has ordered a final judgment under the conditions stated in subsection (1) of this section, the court may stay enforcement of that judgment until the entry 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. 11. Section 25-1515, Reissue Revised Statutes of Nebraska, is amended to read:

25-1515. If execution ~~shall not be~~ is not sued out within five years ~~from~~ after the date of entry of any judgment that now is or may hereafter be rendered in any court of record in this state, or if five years ~~shall~~ have intervened between the date of the last execution issued on such judgment and the time of suing out another writ of execution thereon, such judgment, and all taxable costs in the action in which such judgment was obtained, shall become dormant, and shall cease to operate as a lien on the estate of the judgment debtor.

Sec. 12. Section 25-1517, Reissue Revised Statutes of Nebraska, is amended to read:

25-1517. When two or more writs of execution against the same debtor ~~shall be sued out during the term in which judgment was rendered, or within ten days thereafter, and when two or more writs of execution against the same debtor shall be~~ are delivered to the officer on the same day, no preference shall be given to either of such writs; but if a sufficient sum of money ~~be~~ is not made to satisfy all executions, the amount made shall be distributed to the several creditors in proportion to the amount of their respective demands. In all other cases the writ of execution first delivered to the officer shall be first satisfied; and it shall be the duty of the officer to endorse on every writ of execution the time when he or she received the ~~same writ.~~ This section shall not be \neq but nothing herein contained shall be ~~so~~ construed as to affect any preferable lien which one or more of the judgments on which execution issued may have on the lands of the judgment debtor.

Sec. 13. Section 25-1542, Reissue Revised Statutes of Nebraska, is amended to read:

25-1542. No judgment on which execution has not been taken out and levied before the expiration of five years ~~next~~ after its ~~rendition~~ entry shall operate as a lien upon the estate of any debtor to the preference of any other bona fide judgment creditor or purchaser, but when judgment has been or may be rendered in the Court of Appeals or Supreme Court and any special mandate awarded to the district court to carry the same into execution, the lien of the judgment creditor shall continue for five years after the first day of the next term of the district court to which such mandate may be directed. Nothing in this section shall be construed to defeat the lien of any judgment creditor who fails to take out execution and cause a levy to be made as provided in this section when such failure is occasioned by appeal,

proceedings in error, or injunction or by a vacancy in the office of sheriff and coroner or the inability of such officers until one year after such disability is removed.

Sec. 14. Section 25-1804, Reissue Revised Statutes of Nebraska, is amended to read:

25-1804. (1) A party seeking an award for fees and other expenses pursuant to sections 25-1802 to 25-1807 shall, not later than thirty days after the entry of the final judgment is made in the action, submit to the court an application which provides evidence of eligibility for an award pursuant to such sections and which specifies the amount sought. If the amount sought includes an attorney's fee or the fee for an expert witness, the application shall include an itemized statement for each such fee indicating the actual time expended in service to the applicant and the rate at which the fees were computed.

(2) Notwithstanding any other provision of such sections, fees and other expenses shall be awarded as provided in such sections only to those prevailing parties who are:

(a) Natural persons; or

(b) A sole proprietorship, partnership, limited liability company, corporation, association, or public or private organization:

(i) That had an average daily employment of fifty persons or less for the twelve months preceding the filing of such action; and

(ii) Whose gross receipts for the twelve-month period preceding the filing of the action was two million dollars or less or whose average gross receipts for the three twelve-month periods preceding the filing of such appeal pursuant to the Administrative Procedure Act was two million dollars or less, whichever amount is greater.

Sec. 15. Section 25-1912, Revised Statutes Supplement, 1999, is amended to read:

25-1912. (1) The proceedings to obtain a reversal, vacation, or modification of judgments and decrees rendered or final orders made by the district court, including judgments and sentences upon convictions for felonies and misdemeanors, shall be by filing in the office of the clerk of the district court in which such judgment, decree, or final order was rendered, within thirty days after the entry of such judgment, decree, or final order, a notice of intention to prosecute such appeal signed by the appellant or appellants or his, her, or their attorney of record and, except as otherwise provided in sections 25-2301 to 25-2310, 29-2306, and 48-641, by depositing with the clerk of the district court the docket fee required by section 33-103.

(2) A notice of appeal or docket fee filed or deposited after the announcement of a decision or final order but before the entry of the judgment, decree, or final order shall be treated as filed or deposited after the entry of the judgment, decree, or final order and on the date of entry.

(3) The running of the time for filing a notice of appeal shall be terminated as to all parties (a) by a ~~motion for a new trial under section 25-1143 if such motion is filed by any party within ten days after the verdict, report, or decision was rendered or~~ (b) by a ~~motion to set aside the verdict or judgment under section 25-1315.02 if such motion is filed by any party within ten days after the receipt of a verdict~~ timely motion for a new trial under section 6 of this act, (b) by a timely motion to alter or amend a judgment under section 7 of this act, or (c) by a timely motion to set aside the verdict or judgment under section 25-1315.02, and the full time for appeal fixed in subsection (1) of this section commences to run from the entry of the order ruling upon the motion filed pursuant to subdivision (a), (b), or (c) ~~or~~ ~~(b)~~ of this subsection. When any motion terminating the time for filing a notice of appeal is timely filed by any party, a notice of appeal filed before the court announces its decision upon the terminating motion shall have no effect, whether filed before or after the timely filing of the terminating motion. A new notice of appeal shall be filed within the prescribed time after the entry of the order ruling on the motion. No additional fees are required for such filing. A notice of appeal filed after the court announces its decision or order on the terminating motion but before the entry of the order is treated as filed on the date of and after the entry of the order.

(4) Except as otherwise provided in subsection (3) of this section and sections 25-2301 to 25-2310, 29-2306, and 48-641, an appeal shall be deemed perfected and the appellate court shall have jurisdiction of the cause when such notice of appeal has been filed and such docket fee deposited in the office of the clerk of the district court, and after being perfected no appeal shall be dismissed without notice, and no step other than the filing of such notice of appeal and the depositing of such docket fee shall be deemed jurisdictional.

(5) The clerk of the district court shall forward such docket fee and a certified copy of such notice of appeal to the Clerk of the Supreme Court, and the Clerk of the Supreme Court shall docket such appeal.

(6) Within thirty days after the date of filing of notice of appeal, the clerk of the district court shall prepare and file with the Clerk of the Supreme Court a transcript certified as a true copy of the proceedings contained therein. The Supreme Court shall, by rule, specify the method of ordering the transcript and the form and content of the transcript. Neither the form nor substance of such transcript shall affect the jurisdiction of the Court of Appeals or Supreme Court.

(7) Nothing in this section shall prevent any person from giving supersedeas bond in the district court in the time and manner provided in section 25-1916 nor affect the right of a defendant in a criminal case to be admitted to bail pending the review of such case in the Court of Appeals or Supreme Court.

Sec. 16. Section 25-1931, Revised Statutes Supplement, 1999, is amended to read:

25-1931. Proceedings under section 25-1901 for reversing, vacating, or modifying judgments or final orders shall be commenced within thirty days after the ~~entry~~ rendition of the judgment, ~~decree~~, or making of the final order complained of, except that when the person entitled to such proceedings is an infant, mentally incompetent, or imprisoned, he or she shall have one year, exclusive of the time of his or her disability, within which to commence such proceedings.

Sec. 17. Section 25-2001, Revised Statutes Supplement, 1998, is amended to read:

25-2001. (1) The inherent power of a district court to vacate or modify its judgments or orders during term may also be exercised after the end of the term, upon the same grounds, upon a motion filed within six months after the entry of the judgment or order.

(2) The power of a district court under its equity jurisdiction to set aside a judgment or an order as an equitable remedy is not limited by this section.

(3) Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court by an order nunc pro tunc at any time on the court's initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the case is submitted for decision in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(4) A district court ~~shall have power to~~ may vacate or modify its own judgments or orders after the term at which such judgments or orders were made ~~(1) by granting a new trial of the cause within the time and in the manner prescribed in sections 25-1143 and 25-1145; (2) by a new trial granted in proceedings against defendants served by publication; (3) (a) for mistake, neglect, or omission of the clerk, or irregularity in obtaining a judgment or order; (4) (b) for fraud practiced by the successful party in obtaining the judgment or order; (5) (c) for newly discovered material evidence which could neither have been discovered with reasonable diligence before trial nor have been discovered with reasonable diligence in time to move for a new trial; (d) for erroneous proceedings against an infant or person of unsound mind, where if the condition of such defendant does not appear in the record, nor the error in of the proceedings; (6) (e) for the death of one of the parties before the judgment in the action; (7) (f) for unavoidable casualty or misfortune, preventing the party from prosecuting or defending; (8) for errors in a judgment shown by an infant in twelve months after arriving at full age, as prescribed in section 25-1317; and (9) and (g) for taking judgments upon warrants of attorney for more than was due to the plaintiff, when the defendant was not summoned or otherwise legally notified of the time and place of taking such judgment.~~

Sec. 18. Section 25-2002, Reissue Revised Statutes of Nebraska, is amended to read:

25-2002. The proceedings to vacate or modify the judgment or order on the grounds mentioned in subsection (4) of section 25-2001, subdivisions (4), (5), (6), (7), (8) and (9) shall be by petition verified by affidavit, setting forth the judgment or order, the grounds to vacate or modify it, and the defense to the action, if the party applying was defendant. On such petition a summons shall issue and be served as in the commencement of an action. Summons ~~PROVIDED, such summons~~ shall not issue in any case in which there is upon the minutes of the court, or among the files of the case, a waiver of error by the party or ~~his~~ the party's attorney, unless the court or

a judge thereof, ~~shall endorse~~ endorses upon the petition permission to issue such summons.

Sec. 19. Section 25-2008, Reissue Revised Statutes of Nebraska, is amended to read:

25-2008. Proceedings to vacate or modify a judgment or order, for the causes mentioned in subsection (4) of section 25-2001, ~~subdivisions (4), (5) and (7),~~ must be commenced within no later than two years after the entry of the judgment was rendered or order made, or order unless the party entitled thereto ~~be~~ is an infant or person of unsound mind, and then within no later than two years after removal of such disability. ~~Proceedings for causes mentioned in subdivisions (3) and (6) of the same section shall be within three years, and in subdivision (9) within one year, after the defendant has notice of the judgment.~~

Sec. 20. Section 25-21,130, Reissue Revised Statutes of Nebraska, is amended to read:

25-21,130. When judgment has been rendered in favor of the claimant, ~~he~~ the claimant may at any time within one year ~~thereafter,~~ after the entry of the judgment bring suit against the defendant and recover the damages ~~he~~ the claimant has sustained by reason of the act of the defendant.

Sec. 21. Section 25-21,167, Reissue Revised Statutes of Nebraska, is amended to read:

25-21,167. The district court of Lancaster County shall speedily determine the action, and an appeal may be taken to the Court of Appeals within thirty days ~~thereafter~~ after the entry of the judgment. Trial in the appellate court shall in all ways be expedited, set for an early hearing, and advanced as other causes which involve the public welfare and convenience are advanced.

Sec. 22. Section 25-21,217, Reissue Revised Statutes of Nebraska, is amended to read:

25-21,217. If judgment for costs or damages ~~shall be~~ are rendered against any such litigant and such litigant ~~shall fail, refuse or neglect to pay said~~ fails, refuses, or neglects to pay the judgment within three months ~~from the rendition thereof~~ after the date of entry of the judgment, then the State of Nebraska shall be liable for the payment of ~~said~~ the judgment and shall pay the same.

Sec. 23. Section 25-21,220, Reissue Revised Statutes of Nebraska, is amended to read:

25-21,220. Proceedings under sections 25-21,219 to 25-21,235 may be had:

(1) ~~In~~ in all cases against tenants holding over their terms, and a tenant shall be deemed to be holding over his or her term whenever ~~he~~ the tenant has failed, neglected, or refused to pay the rent or any part thereof when the ~~same~~ rent became due; ~~in~~

(2) In all cases of sales of real estate or executions, orders, or other judicial process when the judgment debtor was in possession at the time of the ~~rendition~~ entry of the judgment ~~of~~ or decree, by virtue of which such sale was made; ~~in~~

(3) In all cases of sale by executors or administrators or guardians and on partition ~~where~~ if any of the parties to the partition were in possession at the commencement of the suit after such sales so made on execution or otherwise ~~shall~~ have been examined by the proper court and the ~~same~~ by such court sales adjudged legal; and ~~in~~

(4) In all cases ~~where~~ when the defendant is a settler or occupier of lands or tenements, without color of title, and to which the complainant has the right of possession.

This section shall not be construed as limiting the provisions of section 25-21,219.

Sec. 24. Section 25-21,230, Reissue Revised Statutes of Nebraska, is amended to read:

25-21,230. ~~Where~~ If a judgment of restitution ~~shall be~~ is entered, the court shall, at the request of the plaintiff, or ~~his~~ the plaintiff's attorney, issue a writ of execution thereon which shall be in the following form, as nearly as practicable:

The State of Nebraska, County, ss.

To any Constable or Sheriff of County:

Whereas, in a certain action for the forcible entry and detention, (or the forcible detention, as the case may be) of the following described premises, to wit:, lately tried before this court, wherein was plaintiff, and was defendant, judgment was ~~rendered~~ entered on the day of A.D., you therefor are hereby commanded to cause the defendant to be forthwith removed from ~~said~~ the premises, and the ~~said~~ plaintiff to have restitution of the

same; also that you levy of the goods and chattels of the ~~said~~ defendant, and make the costs aforesaid, and all accruing costs; and of this writ make legal service and due return. Witness my hand this day of, A.D., Clerk of the County Court.

Sec. 25. Section 25-2728, Reissue Revised Statutes of Nebraska, is amended to read:

25-2728. (1) Any party in a civil case and any defendant in a criminal case may appeal from the final judgment or final order of the county court to the district court of the county where the county court is located. In a criminal case, a prosecuting attorney may obtain review by exception proceedings pursuant to sections 29-2317 to 29-2319.

(2) Sections 25-2728 to 25-2738 shall not apply to:

(a) Appeals in eminent domain proceedings as provided in sections 76-715 to 76-723;

(b) Appeals in proceedings in the county court sitting as a juvenile court as provided in sections 43-287.01 to 43-287.06, 43-2,106, and 43-2,106.01;

(c) Appeals in matters arising under the Nebraska Probate Code as provided in section 30-1601;

(d) Appeals in adoption proceedings as provided in section 43-112;
and

(e) Appeals in inheritance tax proceedings as provided in section 77-2023; and

(f) Appeals in domestic relations matters as provided in section 25-2739.

Sec. 26. Section 25-2729, Revised Statutes Supplement, 1999, is amended to read:

25-2729. (1) In order to perfect an appeal from the county court, the appealing party shall within thirty days after the entry of the judgment or final order complained of:

(a) File with the clerk of the county court a notice of appeal; and

(b) Deposit with the clerk of the county court a docket fee in the amount of the filing fee in district court.

(2) Satisfaction of the requirements of subsection (1) of this section shall perfect the appeal and give the district court jurisdiction of the matter appealed.

(3) The entry of a judgment or final order occurs when the clerk of the court places the file stamp and date upon the judgment or final order. For purposes of determining the time for appeal, the date stamped on the judgment or final order shall be the date of entry.

(4) In appeals from the Small Claims Court only, the appealing party shall also, within the time fixed by subsection (1) of this section, deposit with the clerk of the county court a cash bond or undertaking, with at least one good and sufficient surety approved by the court, in the amount of fifty dollars, conditioned that the appellant will satisfy any judgment and costs that may be adjudged against him or her.

(5) A notice of appeal or docket fee filed or deposited after the announcement of a decision or final order but before the entry of the judgment or final order shall be treated as filed or deposited after the entry of the judgment or final order and on the day of entry.

(6) The running of the time for filing a notice of appeal shall be terminated as to all parties (a) by a ~~motion for a new trial under section 25-1143 if such motion is filed by any party within ten days after the verdict, report, or decision was rendered or~~ (b) by a timely motion for a new trial under section 6 of this act, (b) by a timely motion to alter or amend a judgment under section 7 of this act, or (c) by a timely motion to set aside the verdict or judgment under section 25-1315.02, and the full time for appeal fixed in subsection (1) of this section commences to run from the entry of the order ruling upon the motion filed pursuant to subdivision (a), (b), or (c) ~~or~~ (b) of this subsection. When any motion terminating the time for filing a notice of appeal is timely filed by any party, a notice of appeal filed before the court announces its decision upon the terminating motion shall have no effect, whether filed before or after the timely filing of the terminating motion. A new notice of appeal shall be filed within the prescribed time from the entry of the order ruling on the motion. No additional fees are required for such filing. A notice of appeal filed after the court announces its decision or order on the terminating motion but before the entry of the order is treated as filed on the date of and after the entry of the order.

(7) The party appealing shall serve a copy of the notice of appeal upon all parties who have appeared in the action or upon their attorney of

record. Proof of service shall be filed with the notice of appeal.

(8) If an appellant fails to comply with any provision of subsection (4) or (7) of this section, the district court on motion and notice may take such action, including dismissal of the appeal, as is just.

Sec. 27. Section 25-2733, Reissue Revised Statutes of Nebraska, is amended to read:

25-2733. (1) In all cases other than appeals from the Small Claims Court, the district court shall review the case for error appearing on the record made in the county court. The district court shall render a judgment which may affirm, affirm but modify, or reverse the judgment or final order of the county court. If the district court reverses, it may enter judgment in accordance with its findings or remand the case to the county court for further proceedings consistent with the judgment of the district court. Within two judicial days after the decision of the district court becomes final, the clerk of the district court shall issue a mandate in appeals from the county court and transmit the mandate in appeals to the clerk of the county court on the form prescribed by the Supreme Court together with a copy of such decision.

(2) The bill of exceptions, if filed with the clerk at or before the hearing, shall be considered admitted in evidence on the hearing of the appeal unless the court on objection by a party excludes all or part of it.

(3) The judgment of the district court shall vacate the judgment in the county court. The taxation of costs in the district court shall include the costs in the county court. If a judgment of the county court is affirmed or affirmed but modified, interest on the amount of the judgment in the district court that does not exceed the amount of the judgment in the county court shall run from the date of entry of the judgment appealed from the county court.

Sec. 28. Section 25-2804, Reissue Revised Statutes of Nebraska, is amended to read:

25-2804. (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 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. If the notice is to be served by certified mail, the clerk shall provide the plaintiff with written instructions, prepared and provided by the State Court Administrator, regarding the proper procedure for service by certified mail. ~~7 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 25-2802, 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 acknowledgment 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 25-2807.

Sec. 29. Section 27-802, Reissue Revised Statutes of Nebraska, is amended to read:

27-802. Hearsay is not admissible except as provided by these rules, ~~or~~ by other rules adopted by the statutes of the State of Nebraska, or by the discovery rules of the Supreme Court.

Sec. 30. Section 29-117, Revised Statutes Supplement, 1998, is amended to read:

29-117. The application for review provided in section 29-116 shall be accompanied by a copy of the order of the trial court granting the motion to suppress and a ~~transcript of all bill of exceptions containing all of the~~ evidence, including affidavits, considered by the trial court in its ruling on the motion, and so certified by the trial court. The application shall be filed with the Clerk of the Supreme Court, if the trial court is the district court, or with the clerk of the district court, if the trial court is the county court, within such time as may be ordered by the trial court, which in fixing such time shall take into consideration the length of time required to prepare the ~~necessary transcripts~~ bill of exceptions, and shall also consider whether the defendant is in jail or whether he or she is on bail, but in no event shall more than thirty days be given in which to file such application.

Sec. 31. Section 29-825, Revised Statutes Supplement, 1998, is amended to read:

29-825. The application for review provided in section 29-824 shall be accompanied by a copy of the order of the trial court granting the motion to suppress and a ~~transcript of bill of exceptions containing~~ all of the evidence, including affidavits, considered by the trial court in its ruling on the motion, and so certified by the trial court. The application shall be filed with the Clerk of the Supreme Court, if the trial court is the district court, or with the clerk of the district court, if the trial court is the county court, within such time as may be ordered by the trial court, which in fixing such time shall take into consideration the length of time required to prepare the ~~necessary transcript~~ bill of exceptions, and shall also consider whether the defendant is in jail or whether he or she is on bail, but in no event shall more than thirty days be given in which to file such application.

Sec. 32. Section 29-2525, Reissue Revised Statutes of Nebraska, is amended to read:

29-2525. In cases when the punishment is capital, no notice of appeal shall be required and within the time prescribed by section ~~25-1931~~ 25-1912 for the commencement of proceedings for the reversing, vacating, or modifying of judgments, the clerk of the district court in which the conviction was had shall notify the court reporter who shall prepare a bill of exceptions as in other cases and the clerk shall prepare and file with the Clerk of the Supreme Court a transcript of the record of the proceedings, for which no charge shall be made. The Clerk of the Supreme Court shall, upon receipt of the transcript, docket the appeal. No payment of a docket fee shall be required.

The Supreme Court shall expedite the rendering of its opinion on the appeal, giving the matter priority over civil and noncapital criminal matters.

Sec. 33. Section 42-372, Reissue Revised Statutes of Nebraska, is amended to read:

42-372. (1) A decree dissolving a marriage becomes final and operative, except for the purpose of review by appeal, at the time specified in section 42-372.01.

(2) For the purpose of review by appeal, the decree shall be treated as a final order as soon as it is ~~rendered~~ entered. If an appeal is instituted that does not challenge the finding that the marriage is irretrievably broken, then the decree shall become final and operative, as to that portion of the decree that dissolves the marriage, at the time specified in section 42-372.01 as if no such appeal had been instituted. If an appeal is instituted within thirty days after the date the decree is ~~rendered~~ entered that challenges the finding that the marriage is irretrievably broken, such decree does not become final until such proceedings are finally determined or the date of death of one of the parties to the dissolution, whichever occurs first.

Sec. 34. Section 42-372.01, Reissue Revised Statutes of Nebraska, is amended to read:

42-372.01. (1) Except for purposes of appeal as prescribed in section 42-372, for purposes of remarriage as prescribed in subsection (2) of this section, and for purposes of continuation of health insurance coverage as prescribed in subsection (3) of this section, a decree dissolving a marriage becomes final and operative thirty days after the decree is ~~rendered~~ entered or on the date of death of one of the parties to the dissolution, whichever occurs first. If the decree becomes final and operative upon the date of death of one of the parties to the dissolution, the decree shall be treated as if it became final and operative the date it was ~~rendered~~ entered.

(2) For purposes of remarriage other than remarriage between the parties, a decree dissolving a marriage becomes final and operative six months after the decree is ~~rendered~~ entered or on the date of death of one of the parties to the dissolution, whichever occurs first. If the decree becomes final and operative upon the date of death of one of the parties to the dissolution, the decree shall be treated as if became final and operative the date it was ~~rendered~~ entered.

(3) For purposes of continuation of health insurance coverage, a decree dissolving a marriage becomes final and operative six months after the decree is ~~rendered~~ entered.

(4) A decree dissolving a marriage rendered prior to September 9, 1995, which is not final and operative becomes operative pursuant to the provisions of section 42-372 as such section existed immediately preceding September 9, 1995.

Sec. 35. Section 45-103, Reissue Revised Statutes of Nebraska, is amended to read:

45-103. Interest on decrees and judgments for the payment of money shall be fixed at a rate equal to one percentage point above the bond equivalent yield, as published by the Secretary of the Treasury of the United States, of the average accepted auction price for the last auction of fifty-two-week United States Treasury bills in effect on the date of entry of the judgment. The State Court Administrator shall distribute notice of such rate and any changes to it to all Nebraska judges to be in effect two weeks after the date the auction price is published by the Secretary of the Treasury of the United States. This interest rate shall not apply to:

(1) An action in which the interest rate is specifically provided by law; or

(2) An action founded upon an oral or written contract in which the parties have agreed to a rate of interest other than that specified in this section.

Sec. 36. Section 76-718, Reissue Revised Statutes of Nebraska, is amended to read:

76-718. After ~~rendition~~ entry of final judgment in the district court on the appeal, a certified copy thereof shall be prepared and transmitted by the clerk of the district court to the county judge.

Sec. 37. Original sections 11-124, 25-208, 25-525, 25-1142, 25-1273.01, 25-1315.02, 25-1515, 25-1517, 25-1542, 25-1804, 25-2002, 25-2008, 25-21,130, 25-21,167, 25-21,217, 25-21,220, 25-21,230, 25-2728, 25-2733, 25-2804, 27-802, 29-2525, 42-372, 42-372.01, 45-103, and 76-718, Reissue Revised Statutes of Nebraska, sections 25-2001, 29-117, and 29-825, Revised Statutes Supplement, 1998, and sections 25-705, 25-1912, 25-1931, and 25-2729, Revised Statutes Supplement, 1999, are repealed.

Sec. 38. The following sections are outright repealed: Sections 25-1143, 25-1145, 25-1302, and 25-2003, Reissue Revised Statutes of Nebraska.