

## LEGISLATIVE BILL 509

Approved by the Governor May 09, 2017

Introduced by Ebke, 32.

A BILL FOR AN ACT relating to subpoenas; to amend sections 25-1223, 25-1224, 25-1226, 25-1228, 29-1901, and 29-1903, Reissue Revised Statutes of Nebraska; to change and eliminate provisions relating to the issuance of subpoenas and compulsory process in criminal cases; to change and eliminate provisions relating to witness fees; to harmonize provisions; to repeal the original sections; and to outright repeal sections 25-1225 and 25-1236, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 25-1223, Reissue Revised Statutes of Nebraska, is amended to read:

25-1223 (1) Upon the request of a party to a civil action or proceeding, a subpoena may be issued to command an individual to testify at a trial or deposition. The term trial in reference to a subpoena includes a hearing at which testimony may be taken.

(2) The clerk or a judge of the court in which the action or proceeding is pending shall issue a trial subpoena upon the request of a party. An attorney, as an officer of the court, may issue and sign a trial subpoena on behalf of the court if the attorney is authorized to practice in the court. An attorney who issues a subpoena must file a copy of the subpoena with the court on the day the subpoena is issued.

(3) A person before whom a deposition may be taken may issue a deposition subpoena on behalf of the court in which the action or proceeding is pending. An attorney, as an officer of the court, may issue and sign a deposition subpoena on behalf of the court if the attorney is authorized to practice in the court.

(4) A subpoena shall state the name of the court from which it is issued, the title of the action, and the case number and shall command each person to whom it is directed to appear and testify at the time and place specified in the subpoena.

(5) A trial subpoena that is issued in a civil action or proceeding (a) at the request of an agency of state government or (b) pursuant to section 25-2304 shall contain the following statement: As a witness in [insert name of court], you are entitled to receive a witness fee in the amount of [insert amount from section 33-139] for each day that you are required to be in court and, if you live more than one mile from the courthouse, you are also entitled to receive mileage at the rate that state employees receive. Ask the lawyer or party who subpoenaed you or the clerk of the court for information about what you should do to receive the fees and mileage to which you are entitled.

(6) Any other trial subpoena in a civil action or proceeding shall contain the following statement: As a witness in [insert name of court], you are entitled to receive a witness fee in the amount of [insert amount from section 33-139] for each day that you are required to be in court and, if you live more than one mile from the courthouse, you are also eligible to receive mileage at the rate that state employees receive. You should have received your witness fee for one day with this subpoena. Ask the lawyer or party who subpoenaed you or the clerk of the court for information about what you should do to receive the additional fees, if any, and mileage to which you are entitled.

(7) The Supreme Court may promulgate forms for subpoenas for use in civil and criminal actions and proceedings. Any such forms shall not be in conflict with the laws governing such matters.

(8) A subpoena may be served by a sheriff or constable. It may also be served by a person who is twenty-one years of age or older and who is not a party to the action or proceeding.

~~The clerks of the several courts and judges of the county courts shall on application of any person having a cause or any matter pending in court, issue a subpoena for witnesses under the seal of the court, inserting all the names required by the applicant in one subpoena, which may be served by any person not interested in the action, or by the sheriff, coroner or constable; but when served by any person other than a public officer, proof of service shall be shown by affidavit, but no costs of serving the same shall be allowed, except when served by an officer.~~

Sec. 2. Section 25-1224, Reissue Revised Statutes of Nebraska, is amended to read:

25-1224 (1) A subpoena commanding an individual to appear and testify at a trial or deposition may command that at the same time and place specified in the subpoena for the individual to appear and testify, the individual must produce designated documents, electronically stored information, or tangible things in the individual's possession, custody, or control. The scope of a command to produce documents, electronically stored information, or tangible things pursuant to this section is governed by the rules of discovery in civil cases.

(2) The Supreme Court may promulgate a rule for discovery in civil cases

that specifies the procedures to be followed when a party seeks to serve a deposition subpoena that commands the individual to produce designated documents, electronically stored information, or tangible things in the individual's possession, custody, or control. Any such rule shall not conflict with the laws governing such matters.

~~The subpoena shall be directed to the person therein named, requiring him to attend at a particular time and place, to testify as a witness; and it may contain a clause directing a witness to bring with him any book, writing or other thing under his control, which he is bound by law to produce as evidence.~~

Sec. 3. Section 25-1226, Reissue Revised Statutes of Nebraska, is amended to read:

25-1226 (1) A subpoena for a trial or deposition may be served by personal service, which is made by leaving the subpoena with the individual to be served, or by certified mail service, which is made by sending the subpoena by certified mail with a return receipt requested showing to whom and where delivered and the date of delivery. Service by certified mail is made on the date of delivery shown on the signed receipt.

(2) A subpoena for a trial must be served at least two days before the day on which the individual is commanded to appear and testify. A court may shorten the period for service for good cause shown. In determining whether good cause exists, a court may consider all relevant circumstances, including, but not limited to, the need for the testimony, the burden on the individual, and the reason why the individual was not subpoenaed earlier.

~~The subpoena shall be served either (1) personally or (2) by mailing a copy thereof by either registered or certified mail not less than six days before the trial day of the cause upon which said witness is required to attend. The person making such service shall make a return thereof showing the manner of service.~~

Sec. 4. Section 25-1228, Reissue Revised Statutes of Nebraska, is amended to read:

25-1228 (1) The witness fee for one day's attendance must be served with a trial subpoena except when the subpoena is issued (a) at the request of an agency of state government or (b) pursuant to section 25-2304.

(2) The person serving the subpoena shall make a return of service stating the name of the individual served, the date and method of service, and, if applicable, that the required witness fee was served with the subpoena. The return of service must be by affidavit unless the subpoena was served by a sheriff or constable. If service was made by certified mail, the signed receipt must be attached to the return of service.

(3) The cost of service of a subpoena is taxable as a court cost, and when service of a subpoena is made by a person other than a sheriff or constable, the cost taxable as a court cost is the lesser of the actual amount incurred for service of process or the statutory fee set for sheriffs in section 33-117.

(4) Except as provided in section 25-2304, the party at whose request a trial subpoena is issued in a civil action or proceeding must pay the witness the fees and mileage to which the witness is entitled under section 33-139. Any fees and mileage that were not paid to the witness before the witness testified must be paid to the witness within a reasonable time after the witness testified.

~~(1) Except as provided in subsection (2) of this section, a witness may demand his traveling fees, and fee for one day's attendance, when the subpoena is served upon him, and if the same be not paid the witness shall not be obliged to obey the subpoena. The fact of such demand and nonpayment shall be stated in the return.~~

~~(2) When a subpoena is issued at the request of any agency of state government, the witness shall not be entitled to demand his traveling fees and fee for one day's attendance but shall be required to obey the subpoena if, at the time of service upon him, he is furnished a statement prepared by the agency advising him of the rate of travel fees allowable, the fee for each day's attendance pursuant to the subpoena, and that he will be paid at such rates following his attendance.~~

Sec. 5. Section 29-1901, Reissue Revised Statutes of Nebraska, is amended to read:

29-1901 (1) The statutes governing subpoenas in civil actions and proceedings shall also govern subpoenas in traffic and criminal cases, except that subsections (1), (3), and (4) of section 25-1228 shall not apply to those cases. The payment of compensation and mileage to witnesses in those cases shall be governed by section 29-1903.

(2) A trial subpoena in a traffic and criminal case shall contain the statement specified in subsection (5) of section 25-1223.

~~(1) In all criminal cases it shall be the duty of the clerk, upon a praecipe being filed, to issue writs of subpoena for all witnesses named in the praecipe, directed to the sheriff of his or her county or of any county in the state where the witnesses reside or may be found, which shall be served and returned as in other cases. Such sheriff, by writing endorsed on such writs, may depute any disinterested person to serve and return the same. The writs of subpoena and all notices to appear shall include the following or substantially similar language: You may be entitled to compensation for witness fees and mileage for each day actually employed in attendance on the court or grand jury.~~

~~(2) A witness in a traffic, criminal, or juvenile case shall be entitled to a witness fee and mileage after appearing in court in response to a subpoena. The clerk of the court shall immediately submit a claim for payment~~

~~of witness fees and mileage on behalf of all such witnesses to the county clerk in cases involving a violation of state law or to the city clerk in cases in violation of a city ordinance. All witness fees and mileage paid by a defendant as part of the court costs ordered by the court to be paid shall be reimbursed to the county or city treasurer as appropriate.~~

Sec. 6. Section 29-1903, Reissue Revised Statutes of Nebraska, is amended to read:

29-1903 (1) The amount of the witness fee and mileage in traffic, criminal, and juvenile cases is governed by section 33-139.

(2) A witness in a traffic, criminal, or juvenile case shall be entitled to a witness fee and mileage after appearing in court in response to a subpoena. The clerk of the court shall immediately submit a claim for payment of witness fees and mileage on behalf of all such witnesses to the county clerk in cases involving a violation of state law or to the city clerk in cases involving a violation of a city ordinance. All witness fees and mileage paid by a defendant as part of the court costs ordered by the court to be paid shall be reimbursed to the county or city treasurer as appropriate.

(3) ~~Any person accused of crime amounting to a misdemeanor or felony shall have compulsory process to enforce the attendance of witnesses in his or her behalf, and they shall be paid for their mileage and per diem the same fees as are now or may hereafter be allowed by law to witnesses for the state in the prosecution of such accused person. Mileage shall be computed at the rate provided in section 81-1176 for state employees. In case such accused person is convicted and is unable to pay such mileage and per diem to any witnesses, they shall be paid out of the county treasury of the county wherein such crime was committed; and in case such accused person is acquitted upon his or her trial, the fees of his or her witnesses shall be likewise paid out of such county treasury; Provided, however, in no case shall the fees of any such witnesses be so paid, unless before the trial of such accusations such accused person shall make and file an affidavit, stating the names of his or her witnesses, and that he or she has made a statement to his or her counsel of the facts he or she expects to prove by such witnesses, and has been advised by such counsel that their testimony is material on the trial of such accusation, and shall also file an affidavit of such counsel that he or she deems the testimony of such witnesses necessary and material on behalf of such accused person; whereupon the court or judge shall make an order directing that such witnesses, not exceeding fifteen in number, be paid out of the county treasury of the county in which accusations shall be made.~~

Sec. 7. Original sections 25-1223, 25-1224, 25-1226, 25-1228, 29-1901, and 29-1903, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 8. The following sections are outright repealed: Sections 25-1225 and 25-1236, Reissue Revised Statutes of Nebraska.