

AMENDMENTS TO LB1004

(Amendments to Standing Committee amendments, AM3094)

Introduced by Wayne, 13.

1 1. Insert the following new sections:

2 Section 1. Section 29-2101, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 29-2101 A new trial, after a verdict of conviction, may be granted,
5 on the application of the defendant, for any of the following grounds
6 affecting materially his or her substantial rights:

7 (1) Irregularity in the proceedings of the court, of the prosecuting
8 attorney, or of the witnesses for the state or in any order of the court
9 or abuse of discretion by which the defendant was prevented from having a
10 fair trial;

11 (2) ~~Misconduct~~ ~~misconduct~~ of the jury, of the prosecuting attorney,
12 or of the witnesses for the state;

13 (3) ~~Accident~~ ~~accident~~ or surprise which ordinary prudence could not
14 have guarded against;

15 (4) ~~The~~ ~~the~~ verdict is not sustained by sufficient evidence or is
16 contrary to law;

17 (5) ~~Newly~~ ~~newly~~ discovered evidence material for the defendant which
18 he or she could not with reasonable diligence have discovered and
19 produced at the trial. For purposes of this subdivision, newly discovered
20 evidence includes testimony or evidence from a witness who previously
21 asserted a testimonial or constitutional privilege and refused to testify
22 or produce evidence in a prior proceeding;

23 (6) ~~Newly~~ ~~newly~~ discovered exculpatory DNA or similar forensic
24 testing evidence obtained under the DNA Testing Act; or

25 (7) ~~Error~~ ~~error~~ of law occurring at the trial.

26 The changes made to this section by this legislative bill shall

1 apply to all persons, otherwise eligible in accordance with the
2 provisions of this section, whether convicted prior to, on, or subsequent
3 to the effective date of this act.

4 Sec. 2. Section 29-2103, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 29-2103 (1) A motion for new trial shall be made by written
7 application and may be filed either during or after the term of the court
8 at which the verdict was rendered.

9 (2) A motion for a new trial shall state the grounds under section
10 29-2101 which are the basis for the motion and shall be supported by
11 evidence as provided in section 29-2102.

12 (3) A motion for new trial based on the grounds set forth in
13 subdivision (1), (2), (3), (4), or (7) of section 29-2101 shall be filed
14 within ten days after the verdict was rendered unless such filing is
15 unavoidably prevented, and the grounds for such motion may be stated by
16 directly incorporating the appropriate language of section 29-2101
17 without further particularity.

18 (4) A motion for new trial based on the grounds set forth in
19 subdivision (5) of section 29-2101 shall be filed within a reasonable
20 time after the discovery of the new evidence ~~and cannot be filed more~~
21 ~~than five years after the date of the verdict, unless the motion and~~
22 ~~supporting documents show the new evidence could not with reasonable~~
23 ~~diligence have been discovered and produced at trial and such evidence is~~
24 ~~so substantial that a different result may have occurred.~~

25 (5) A motion for new trial based on the grounds set forth in
26 subdivision (6) of section 29-2101 shall be filed within ninety days
27 after a final order is issued under section 29-4123 or within ninety days
28 after the hearing if no final order is entered, whichever occurs first.

29 (6) The changes made to this section by this legislative bill shall
30 apply to all persons, otherwise eligible in accordance with the
31 provisions of this section, whether convicted prior to, on, or subsequent

- 1 to the effective date of this act.
- 2 2. Renumber the remaining sections and correct the repealer
- 3 accordingly.