

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 355

FINAL READING

Introduced by Lathrop, 12.

Read first time January 13, 2021

Committee: Judiciary

1 A BILL FOR AN ACT relating to courts; to amend sections 11-125,
2 25-1093.03, 43-113, and 76-711, Reissue Revised Statutes of
3 Nebraska, and section 25-2804, Revised Statutes Cumulative
4 Supplement, 2020; to change provisions relating to bonds of county
5 judges and clerk magistrates, service of process in replevin
6 actions, forms in Small Claims Court, preservation of records in
7 adoption proceedings, and deposits in eminent domain actions; and to
8 repeal the original sections.

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

1 Section 1. Section 11-125, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 11-125 If any county treasurer, county attorney, clerk of the
4 district court, county clerk, ~~county judge, clerk magistrate,~~ county
5 assessor, register of deeds, county sheriff, county commissioner or
6 supervisor, or acting officer who is appointed as provided by section
7 32-561 furnishes a bond executed by a surety company authorized by the
8 laws of this state to execute such bond and such bond is approved by the
9 county board, then the county may pay the premium for such bond. Any
10 surety bond so executed and approved shall contain a covenant to the
11 effect that when the stated term of the bond is reduced to a shorter term
12 by reason of the death, resignation, or removal from office of such
13 official for a cause not imposing liability on the bond, the obligor
14 shall refund to the county the unearned portion of the premium so paid
15 for the term of the bond subject to a reasonable minimum premium charge.

16 Sec. 2. Section 25-1093.03, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 25-1093.03 If filed at the commencement of suit, such affidavit and
19 request for delivery and such temporary order containing the notice of
20 hearing shall be served by the sheriff or other officer with the summons.
21 If filed after the commencement of suit but before answer, they shall be
22 served separately from the summons, but as soon after their filing and
23 issuance as practicable. The summons shall be served within three days,
24 excluding nonjudicial days, after the date of issuance.

25 Sec. 3. Section 25-2804, Revised Statutes Cumulative Supplement,
26 2020, is amended to read:

27 25-2804 (1) Actions in the Small Claims Court shall be commenced by
28 the plaintiff by filing a claim personally, by mail, or by another method
29 established by Supreme Court rules.

30 (2) At the time of the filing of the claim, the plaintiff shall pay
31 a fee of six dollars and twenty-five cents to the clerk. One dollar and

1 twenty-five cents of such fee shall be remitted to the State Treasurer
2 for credit to the Nebraska Retirement Fund for Judges.

3 (3) Upon filing of a claim in the Small Claims Court, the court
4 shall set a time for hearing and shall cause notice to be served upon the
5 defendant. Notice shall be served not less than five days before the time
6 set for hearing. Notice shall consist of a copy of the complaint and a
7 summons directing the defendant to appear at the time set for hearing and
8 informing the defendant that if he or she fails to appear, judgment will
9 be entered against him or her. Notice shall be served in the manner
10 provided for service of a summons in a civil action. If the notice is to
11 be served by certified mail, the clerk shall provide the plaintiff with
12 written instructions, prepared and provided by the State Court
13 Administrator, regarding the proper procedure for service by certified
14 mail. The cost of service shall be paid by the plaintiff, but such cost
15 and filing fee shall be added to any judgment given the plaintiff.

16 (4) The defendant may file a setoff or counterclaim. Any setoff or
17 counterclaim shall be filed and a copy delivered to the plaintiff at
18 least two days prior to the time of trial. If the setoff or counterclaim
19 exceeds the jurisdictional limits of the Small Claims Court as
20 established pursuant to section 25-2802, the court shall cause the entire
21 matter to be transferred to the regular county court docket and set for
22 trial.

23 (5) No prejudgment actions for attachment, garnishment, replevin, or
24 other provisional remedy may be filed in the Small Claims Court.

25 (6) All forms that may be required by this section shall be
26 prescribed by the Supreme Court. ~~The claim form shall provide for the~~
27 ~~names and addresses of the plaintiff and defendant, a concise statement~~
28 ~~of the nature, amount, and time and place of accruing of the claim, and~~
29 ~~an acknowledgment for use by the person in whose presence the claim form~~
30 ~~is executed and shall also contain a brief explanation of the Small~~
31 ~~Claims Court procedure and methods of appeal therefrom.~~

1 (7) For a default judgment rendered by a Small Claims Court (a) the
2 default judgment may be appealed as provided in section 25-2807, (b) if a
3 motion for a new trial, by the procedure provided in sections 25-1142,
4 25-1144, and 25-1144.01, is filed ten days or less after entry of the
5 default judgment, the court may act upon the motion without a hearing, or
6 (c) if more than ten days have passed since the entry of the default
7 judgment, the court may set aside, vacate, or modify the default judgment
8 as provided in section 25-2720.01. Parties may be represented by
9 attorneys for the purpose of filing a motion for a new trial or to set
10 aside, vacate, or modify a default judgment.

11 Sec. 4. Section 43-113, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 43-113 Except as otherwise provided in the Nebraska Indian Child
14 Welfare Act, court adoption records may not be inspected by the public
15 and shall be permanently retained as a preservation duplicate in the
16 manner provided in section 84-1208 ~~on microfilm~~ or in their original form
17 in accordance with the Records Management Act. No person shall have
18 access to such records except that:

19 (1) Access shall be provided on the order of the judge of the court
20 in which the decree of adoption was entered on good cause shown or as
21 provided in sections 43-138 to 43-140 or 43-146.11 to 43-146.13; or

22 (2) The clerk of the court shall provide three certified copies of
23 the decree of adoption to the parents who have adopted a child born in a
24 foreign country and not then a citizen of the United States within three
25 days after the decree of adoption is entered. A court order is not
26 necessary to obtain these copies. Certified copies shall only be provided
27 upon payment of applicable fees.

28 Sec. 5. Section 76-711, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 76-711 The condemner shall not acquire any interest in or right to
31 possession of the property condemned until he or she has deposited with

1 the court ~~for the use of the condemnee~~ the amount of the condemnation
2 award in effect at the time the deposit is made. The condemner shall have
3 sixty days from the date of the award of the appraisers to deposit with
4 the court the amount of the award or the proceeding will be considered as
5 abandoned. When the amount of the award is deposited with the court by
6 the condemner, the condemner shall be deemed to have accepted the award
7 unless he or she gives notice of appeal from the award of the appraisers
8 pursuant to section 76-715. If the proceeding is abandoned, proceedings
9 may not again be instituted by the condemner to condemn the property
10 within two years from the date of abandonment.

11 If an appeal is taken from the award of the appraisers by the
12 condemnee and the condemnee obtains a greater amount than that allowed by
13 the appraisers, the condemnee shall be entitled to interest from the date
14 of the deposit at the rate provided in section 45-104.02, as such rate
15 may from time to time be adjusted, compounded annually, on the amount
16 finally allowed, less interest at the same rate on the amount withdrawn
17 or on the amount which the condemner offers to stipulate for withdrawal
18 as provided by section 76-719.01. If an appeal is taken from the award of
19 the appraisers by the condemner, the condemnee shall be entitled to
20 interest from the date of deposit at the rate provided in section
21 45-104.02, as such rate may from time to time be adjusted, compounded
22 annually, on the amount finally allowed, less interest at the same rate
23 on the amount withdrawn or on the amount which the condemner offers to
24 stipulate for withdrawal as agreed to by the condemnee as provided by
25 section 76-719.01.

26 Upon deposit of the condemnation award with the court, the condemner
27 shall be entitled to a writ of assistance to place him or her in
28 possession of the property condemned and the condemnee shall be liable
29 for diminution in the value of the property caused by the condemnee's
30 purposeful removal of real or personal property not previously agreed to
31 in writing by the condemner and condemnee from the condemned property.

1 Sec. 6. Original sections 11-125, 25-1093.03, 43-113, and 76-711,
2 Reissue Revised Statutes of Nebraska, and section 25-2804, Revised
3 Statutes Cumulative Supplement, 2020, are repealed.