

LEGISLATIVE BILL 355

Approved by the Governor May 21, 2021

Introduced by Lathrop, 12.

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

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

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

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

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

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

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

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

(2) At the time of the filing of the claim, the plaintiff shall pay a fee of six dollars and twenty-five cents to the clerk. One dollar and twenty-five cents of such fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges.

(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. 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 that may be 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) For a default judgment rendered by a Small Claims Court (a) the default judgment may be appealed as provided in section 25-2807, (b) if a motion for a new trial, by the procedure provided in sections 25-1142, 25-1144, and 25-1144.01, is filed ten days or less after entry of the default judgment, the court may act upon the motion without a hearing, or (c) if more than ten

days have passed since the entry of the default judgment, the court may set aside, vacate, or modify the default judgment as provided in section 25-2720.01. Parties may be represented by attorneys for the purpose of filing a motion for a new trial or to set aside, vacate, or modify a default judgment.

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

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

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

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

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

76-711 The condemner shall not acquire any interest in or right to possession of the property condemned until he or she has deposited with the court ~~for the use of the condemnee~~ the amount of the condemnation award in effect at the time the deposit is made. The condemner shall have sixty days from the date of the award of the appraisers to deposit with the court the amount of the award or the proceeding will be considered as abandoned. When the amount of the award is deposited with the court by the condemner, the condemner shall be deemed to have accepted the award unless he or she gives notice of appeal from the award of the appraisers pursuant to section 76-715. If the proceeding is abandoned, proceedings may not again be instituted by the condemner to condemn the property within two years from the date of abandonment.

If an appeal is taken from the award of the appraisers by the condemnee and the condemnee obtains a greater amount than that allowed by the appraisers, the condemnee shall be entitled to interest from the date of the deposit at the rate provided in section 45-104.02, as such rate may from time to time be adjusted, compounded annually, on the amount finally allowed, less interest at the same rate on the amount withdrawn or on the amount which the condemner offers to stipulate for withdrawal as provided by section 76-719.01. If an appeal is taken from the award of the appraisers by the condemner, the condemnee shall be entitled to interest from the date of deposit at the rate provided in section 45-104.02, as such rate may from time to time be adjusted, compounded annually, on the amount finally allowed, less interest at the same rate on the amount withdrawn or on the amount which the condemner offers to stipulate for withdrawal as agreed to by the condemnee as provided by section 76-719.01.

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

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