

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 869

Introduced by Lathrop, 12.

Read first time January 09, 2020

Committee:

- 1 A BILL FOR AN ACT relating to civil procedure; to amend sections 25-1223,
- 2 25-1224, 25-1226, 25-1228, and 33-106, Revised Statutes Cumulative
- 3 Supplement, 2018; to provide for issuance of subpoenas in civil
- 4 proceedings pending in foreign jurisdictions; to authorize the
- 5 Supreme Court to promulgate rules; to change provisions relating to
- 6 issuance of and scope of subpoenas and witness fees; to harmonize
- 7 provisions; to provide a duty for the Revisor of Statutes; and to
- 8 repeal the original sections.
- 9 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) When authorized by rules promulgated by the Supreme
2 Court, the clerk of the district court may issue a subpoena for discovery
3 in Nebraska for a civil proceeding pending in a foreign jurisdiction.
4 Such a subpoena may command a person to testify at a deposition or
5 command a nonparty to provide discovery without a deposition.

6 (2) The Supreme Court may promulgate rules for subpoenas under this
7 section. The rules may specify the amount of a fee, if any, that must be
8 paid to the clerk of the district court for the issuance of such
9 subpoenas. Any such rules shall not conflict with laws governing such
10 matters.

11 Sec. 2. Section 25-1223, Revised Statutes Cumulative Supplement,
12 2018, is amended to read:

13 25-1223 (1) Upon the request of a party to a civil action or
14 proceeding, a subpoena may be issued to command a person ~~an individual~~ to
15 testify at a trial or deposition. The term trial in reference to a
16 subpoena includes a hearing at which testimony may be taken.

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

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

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

1 (5) Except as provided in subsection (6) of this section, a A trial
2 subpoena that is issued in a civil action or proceeding (a) at the
3 request of an agency of state government or (b) pursuant to section
4 25-2304 shall contain the following statement: As a witness in [insert
5 name of court], you are entitled to receive a witness fee in the amount
6 of [insert amount from section 33-139] for each day that you are required
7 to be in court and, if you live more than one mile from the courthouse,
8 you are also entitled to receive mileage at the rate that state employees
9 receive. Ask the lawyer or party who subpoenaed you or the clerk of the
10 court for information about what you should do to receive the fees and
11 mileage to which you are entitled.

12 (6) A trial subpoena in a civil action or proceeding that commands
13 testimony by an employee of the State of Nebraska or a political
14 subdivision thereof or a privately employed security guard, under the
15 circumstances described in section 33-139.01, shall contain the following
16 statement: As a witness in [insert name of court], you are entitled to be
17 compensated for your actual and necessary expenses if you are required to
18 travel outside of your county of residence to testify. Ask the lawyer or
19 party who subpoenaed you or the clerk of the court for information about
20 what you should do to receive compensation, if any, to which you are
21 entitled.

22 (7) ~~(6)~~ Any other trial subpoena in a civil action or proceeding
23 shall contain the following statement: As a witness in [insert name of
24 court], you are entitled to receive a witness fee in the amount of
25 [insert amount from section 33-139] for each day that you are required to
26 be in court and, if you live more than one mile from the courthouse, you
27 are also eligible to receive mileage at the rate that state employees
28 receive. You should have received your witness fee for one day with this
29 subpoena. Ask the lawyer or party who subpoenaed you or the clerk of the
30 court for information about what you should do to receive the additional
31 fees, if any, and mileage to which you are entitled.

1 (8) (7) The Supreme Court may promulgate forms for subpoenas for use
2 in civil and criminal actions and proceedings. Any such forms shall not
3 be in conflict with the laws governing such matters.

4 (9) (8) A subpoena may be served by a sheriff or constable. It may
5 also be served by a person who is twenty-one years of age or older and
6 who is not a party to the action or proceeding.

7 Sec. 3. Section 25-1224, Revised Statutes Cumulative Supplement,
8 2018, is amended to read:

9 25-1224 (1) A subpoena commanding a person ~~an individual~~ to appear
10 and testify at a trial or deposition may command that at the same time
11 and place specified in the subpoena for the person ~~individual~~ to appear
12 and testify, the person ~~individual~~ must produce designated documents,
13 electronically stored information, or tangible things in the person's
14 ~~individual's~~ possession, custody, or control. The scope of a command to
15 produce documents, electronically stored information, or tangible things
16 pursuant to this section is governed by the rules of discovery in civil
17 cases.

18 (2) The Supreme Court may promulgate a rule for discovery in civil
19 cases that specifies the procedures to be followed when a party seeks to
20 serve a deposition subpoena that commands the person ~~individual~~ to
21 produce designated documents, electronically stored information, or
22 tangible things in the person's ~~individual's~~ possession, custody, or
23 control. Any such rule shall not conflict with the laws governing such
24 matters.

25 Sec. 4. Section 25-1226, Revised Statutes Cumulative Supplement,
26 2018, is amended to read:

27 25-1226 (1) A subpoena for a trial or deposition may be served by
28 personal service, which is made by leaving the subpoena with the person
29 ~~individual~~ to be served, or by certified mail service, which is made by
30 sending the subpoena by certified mail with a return receipt requested
31 showing to whom and where delivered and the date of delivery. Service by

1 certified mail is made on the date of delivery shown on the signed
2 receipt.

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

10 Sec. 5. Section 25-1228, Revised Statutes Cumulative Supplement,
11 2018, is amended to read:

12 25-1228 (1) The witness fee for one day's attendance must be served
13 with a trial subpoena except when the subpoena is issued (a) at the
14 request of an agency of state government or (b) pursuant to section
15 25-2304.

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

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

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

1 witness before the witness testified must be paid to the witness within a
2 reasonable time after the witness testified.

3 Sec. 6. Section 33-106, Revised Statutes Cumulative Supplement,
4 2018, is amended to read:

5 33-106 (1) In addition to the judges' retirement fund fee provided
6 in section 24-703 and the fees provided in section 33-106.03 and except
7 as otherwise provided by law, the fees of the clerk of the district court
8 shall be as provided in this section. ~~follows:~~ There shall be a docket
9 fee of forty-two dollars for each civil and criminal case except:

10 (a) There shall be a docket fee of twenty-five dollars for each a
11 case commenced by filing a transcript of judgment from another court in
12 this state for the purpose of obtaining a lien; as hereinafter provided,

13 (b) For proceedings under the Nebraska Workers' Compensation Act and
14 the Employment Security Law, when provision is made for the fees that may
15 be charged; and

16 (c) There shall be a docket fee of twenty-seven dollars for each a
17 criminal case appealed to the district court from any court inferior
18 thereto as hereinafter provided. There shall be a docket fee of twenty-
19 five dollars for each case commenced by filing a transcript of judgment
20 from another court in this state for the purpose of obtaining a lien.
21 ~~There shall be a docket fee of twenty-seven dollars for each criminal~~
22 ~~case appealed to the district court from any court inferior thereto.~~

23 (2) In all cases, other than those appealed from an inferior court
24 or original filings which are within jurisdictional limits of an inferior
25 court and when a jury is demanded in district court, the docket fee shall
26 cover all fees of the clerk, except that the clerk shall be paid for each
27 copy or transcript ordered of any pleading, record, or other document and
28 that the clerk shall be entitled to a fee of fifteen dollars for a
29 records management fee which will be taxed as costs of the case.

30 (3) In all civil cases, except habeas corpus cases in which a
31 poverty affidavit is filed and approved by the court, and for all other

1 services, the docket fee or other fee shall be paid by the party filing
2 the case or requesting the service at the time the case is filed or the
3 service requested.

4 (4) For any other service which may be rendered or performed by the
5 clerk but which is not required in the discharge of his or her official
6 duties, the fee shall be the same as that of a notary public but in no
7 case less than one dollar.

8 Sec. 7. The Revisor of Statutes shall assign section 1 of this act
9 to Chapter 25, article 12.

10 Sec. 8. Original sections 25-1223, 25-1224, 25-1226, 25-1228, and
11 33-106, Revised Statutes Cumulative Supplement, 2018, are repealed.