

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1027**

Introduced by Lathrop, 12.

Read first time January 16, 2020

Committee: Judiciary

1 A BILL FOR AN ACT relating to civil procedure; to adopt the County Court

2 Special Proceedings Act.

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

1           Section 1. Sections 1 to 7 of this act shall be known and may be  
2 cited as the County Court Special Proceedings Act.

3           Sec. 2. (1) The County Court Special Proceedings Act governs civil  
4 actions in county court which the sole relief sought is a money judgment  
5 and in which all claims, other than compulsory counterclaims, for all  
6 damages by or against any one party total less than or equal to the  
7 county court jurisdictional amount set forth in subdivision (5) of  
8 section 24-517, including damages of any kind, penalties, prefiling  
9 interest, and attorney's fees, but excluding prejudgment interest accrued  
10 after the filing date, postjudgment interest, and costs.

11           (2) The act does not apply to Small Claims Court actions or domestic  
12 relations matters or paternity or custody determinations as defined in  
13 section 25-2740.

14           (3) For the purposes of the act, side means all litigants with  
15 generally common interests in the litigation.

16           Sec. 3. (1) An eligible plaintiff may elect to proceed with county  
17 court special proceedings by certifying that the relief sought meets the  
18 requirements of section 2 of this act. The certification must be on a  
19 form approved by the Supreme Court, signed by all plaintiffs and their  
20 attorneys, if represented, and filed with the complaint. The  
21 certification is not admissible to prove a plaintiff's damages in any  
22 proceeding.

23           (2) Except as otherwise specifically provided by the County Court  
24 Special Proceedings Act, the Nebraska rules of civil procedure are  
25 applicable to actions under the act.

26           (3) A party proceeding under the act may not recover a judgment in  
27 excess of the county court jurisdictional amount set forth in subdivision  
28 (5) of section 24-517, nor may a judgment be entered against a party in  
29 excess of such amount, excluding prejudgment interest that accrues after  
30 the filing date, postjudgment interest, and costs. The jury, if any, must  
31 not be informed of the amount. If the jury returns a verdict for damages

1 in excess of such amount for or against a party, the court shall not  
2 enter judgment on that verdict in excess of such amount, exclusive of the  
3 prejudgment interest that accrues after the filing date, postjudgment  
4 interest, and costs.

5 (4) Upon timely application of any party, the county court may  
6 terminate application of the act and enter such orders as are appropriate  
7 under the circumstances if:

8 (a) The moving party makes a specific showing of substantially  
9 changed circumstances sufficient to render the application of the act  
10 unfair; or

11 (b) A party has in good faith filed a compulsory counterclaim that  
12 seeks relief other than that allowed under the act.

13 (5) Permissive counterclaims are subject to the county court  
14 jurisdictional limit on damages under the act, unless the court severs  
15 the permissive counterclaim.

16 Sec. 4. (1) Except upon agreement of the parties or leave of court  
17 granted upon a showing of good cause, all discovery in county court  
18 special proceedings must be completed no later than sixty days before  
19 trial.

20 (2) Except upon agreement of the parties or leave of court granted  
21 upon a showing of good cause, discovery in county court special  
22 proceedings is subject to the following additional limitations:

23 (a) Each side shall serve no more than ten interrogatories on any  
24 other side;

25 (b) Each side shall serve no more than ten requests for production  
26 on any other side;

27 (c) Each side shall serve no more than ten requests for admission on  
28 any other side. This limit does not apply to requests for admission of  
29 the genuineness of documents that a party intends to offer into evidence  
30 at trial;

31 (d) One deposition of each party may be taken. With regard to

1 corporations, partnerships, voluntary associations, or any other groups  
2 or entities named as a party, one representative deponent may be deposed;  
3 and

4 (e) Each side may take the deposition of up to two nonparties.

5 (3) Each side is entitled to one retained expert, except upon  
6 agreement of the parties or leave of court granted upon a showing of good  
7 cause.

8 (4) A motion for leave of court to modify the limitations set forth  
9 in this section must be in writing and must set forth the proposed  
10 additional discovery or expert and the reasons establishing good cause.

11 Sec. 5. (1) Any party may file any motion permitted under rules  
12 adopted by the Supreme Court for pre-answer motions. Unless the court  
13 orders a stay, the filing of a motion to dismiss will not eliminate or  
14 postpone otherwise applicable pleading or discovery requirements.

15 (2) A motion for summary judgment must be filed no later than ninety  
16 days before trial.

17 Sec. 6. An action under the County Court Special Proceedings Act  
18 should ordinarily be submitted to the jury or the court within two  
19 business days from the commencement of trial. Unless the court allows  
20 additional time for good cause shown, each side shall be allowed no more  
21 than six hours to complete jury selection, opening statements,  
22 presentation of evidence, examination and cross-examination of witnesses,  
23 and closing arguments. Time spent on objections, bench conferences, and  
24 challenges for cause to a juror are not included in the time limit.

25 Sec. 7. (1) Parties to an action under the County Court Special  
26 Proceedings Act should stipulate to factual and evidentiary matters to  
27 the greatest extent possible.

28 (2) For the purposes of the act, the court may overrule objections  
29 based on authenticity and hearsay to the admission of a document,  
30 notwithstanding the absence of testimony or certification from a  
31 custodian or other qualified witness, if:

1       (a) The party offering the document gives notice to all other  
2 parties of the party's intention to offer the document into evidence at  
3 least ninety days in advance of trial. The notice must be given to all  
4 parties together with a copy of any document intended to be offered;

5       (b) The document on its face appears to be what the proponent claims  
6 it is;

7       (c) The document on its face appears not to be hearsay or appears to  
8 fall within a hearsay exception set forth in Nebraska law; and

9       (d) The objecting party has not raised a substantial question as to  
10 the authenticity or trustworthiness of the document.

11       (3) Nothing in this section affects the operation of the Nebraska  
12 Evidence Rules.

13       (4) Nothing in subsection (2) of this section authorizes admission  
14 of a document that contains hearsay within hearsay, unless the court  
15 determines from the face of the document that each part of the combined  
16 statements conforms with a hearsay exception set forth in Nebraska law.

17       (5) Any authenticity or hearsay objections to a document as to which  
18 notice has been provided under subdivision (2)(a) of this section must be  
19 made within thirty days after receipt of the notice.

20       (6)(a) The report of any treating health care provider concerning  
21 the plaintiff may be used in lieu of deposition or in-court testimony of  
22 the health care provider, so long as the report offered into evidence is  
23 on a form adopted for such purpose by the Supreme Court and is signed by  
24 the health care provider making the report.

25       (b) The Supreme Court shall adopt a form for the purposes of  
26 subdivision (6)(a) of this section.

27       (c) Unless otherwise stipulated or ordered by the court, a copy of  
28 any completed health care provider report under subdivision (6)(a) of  
29 this section must be served on all parties at least ninety days in  
30 advance of trial. Any objections to the health care provider statement,  
31 including an objection that the statement is incomplete or does not

1 otherwise comply with this subsection, must be made within thirty days  
2 after receipt of the statement. For good cause shown, the court may issue  
3 such orders regarding the health care provider report as justice may  
4 require, including an order permitting a health care provider to  
5 supplement the report.

6 (d) Any party against whom a health care provider report may be used  
7 has the right, at the party's own initial expense, to cross-examine by  
8 deposition the health care provider signing the report, and the  
9 deposition may be used at trial.