

LEGISLATIVE BILL 516

Passed over the Governor's veto April 16, 1986.

Introduced by Beutler, 28; Hoagland, 6; Barrett, 39;
Baack, 47

AN ACT relating to courts; to amend sections 24-312, 24-503, 24-516, 24-810, 25-1062.01, 25-1064, 42-357, and 43-2,125, Reissue Revised Statutes of Nebraska, 1943, and section 5-105, Revised Statutes Supplement, 1985; to change provisions relating to the number of judges in judicial and county judge districts; to authorize the designation and appointment of judges to serve in additional circumstances as prescribed; to create a commission; to provide for terms and expenses; to provide for designation of primary service locations; to change provisions relating to judicial vacancies; to authorize certain temporary restraining orders without notice as prescribed; to change provisions relating to ex parte orders as prescribed; to eliminate certain provisions relating to injunctions; to provide severability; and to repeal the original sections, and also sections 25-1065 and 25-1066, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 5-105, Revised Statutes Supplement, 1985, be amended to read as follows:

5-105. The State of Nebraska is hereby divided into twenty-one judicial districts as follows:

District No. 1 shall consist of the counties of Johnson, Pawnee, Nemaha, and Richardson;

District No. 2 shall consist of the counties of Sarpy, Cass, and Otoe;

District No. 3 shall consist of the county of Lancaster;

District No. 4 shall consist of the county of Douglas;

District No. 5 shall consist of the counties of Hamilton, Polk, York, Butler, Seward, and Saunders;

District No. 6 shall consist of the counties of Burt, Thurston, Dodge, and Washington;

District No. 7 shall consist of the counties of Fillmore, Saline, Thayer, and Nuckolls;

District No. 8 shall consist of the counties of Dakota, Dixon, and Cedar;

District No. 9 shall consist of the counties of Knox, Antelope, Cuming, Pierce, Madison, Stanton, and Wayne;

District No. 10 shall consist of the counties of Adams, Clay, Phelps, Kearney, Harlan, Franklin, and Webster;

District No. 11 shall consist of the counties of Hall and Howard;

District No. 12 shall consist of the counties of Sherman and Buffalo;

District No. 13 shall consist of the counties of McPherson, Logan, Lincoln, Dawson, Keith, Arthur, Hooker, and Thomas;

District No. 14 shall consist of the counties of Chase, Hayes, Frontier, Furnas, Red Willow, Hitchcock, Perkins, Gosper, and Dundy;

District No. 15 shall consist of the counties of Brown, Keya Paha, Boyd, Rock, Holt, and Cherry;

District No. 16 shall consist of the counties of Sheridan, Grant, Dawes, Box Butte, Morrill, and Sioux;

District No. 17 shall consist of the county of Scotts Bluff;

District No. 18 shall consist of the counties of Jefferson and Gage;

District No. 19 shall consist of the counties of Banner, Kimball, Cheyenne, Garden, and Deuel;

District No. 20 shall consist of the counties of Blaine, Loup, Garfield, Greeley, Wheeler, Valley, and Custer; and

District No. 21 shall consist of the counties of Boone, Platte, Colfax, Nance, and Merrick.

There shall be forty-eight judges of the district court. Each district listed in this section shall be served by at least one judge of the district court. Judges in office on the effective date of this act shall continue to serve in the districts they are serving on such date. On or after the effective date of this act any vacancy shall be determined as prescribed in section 24-810. In the fourth district there shall be twelve judges of the district court, in the third district there shall be six judges of the district court, in the second district there shall be three judges of the district court, in the fifth, sixth, ninth, tenth, eleventh, thirteenth, sixteenth,

seventeenth, and twenty-first districts there shall be two judges of the district court in each of such districts; in all other districts there shall be one judge of the district court.

Sec. 2. That section 24-312, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-312. The district judges may interchange, and hold each other's court. ~~Whenever, and whenever~~ it shall appear by affidavit, to the satisfaction of any district judge in the state, that the judge of any other district is unable to act, on account of sickness, interest, or absence from the district, or from any other cause, the judge to whom application may be made shall have power to make any order, or do any act relative to any suit, judicial matter, or proceeding, or to any special matter arising within the district where such vacancy or disability exists, which the judge of such district court could make or do. ~~The, and the~~ order or act shall have the same effect as if made or done by the judge of such district.

A district judge may appoint by order a consenting county judge residing in the district to act as a district judge in specific instances on any matter over which the district court has determined that it has jurisdiction over the parties and subject matter, except appeals from the county court. The appointed county judge shall have power to make any order or do any act relative to any suit, judicial matter, or proceeding or to any special matter which the district judge of such district could make or do if (1) all parties have consented to the appointment or (2) no party has objected to the appointment within ten days after service of the order of appointment upon him or her. Any such order or act shall have the same effect as if made or done by the district judge of such district. A copy of the order of appointment shall be filed in each action in which a county judge acts as a district judge.

Sec. 3. That section 24-503, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-503. (1) For the purpose of serving the county courts in each county, twenty-one county judge districts are hereby created, which districts shall be the same as those established by section 5-105, except that: District 16 shall consist of the counties of Sheridan, Grant, Dawes, Box Butte, and Sioux; district 17 shall consist of the counties of Scotts Bluff, Morrill, and Garden; and district 19 shall consist of

the counties of Banner, Kimball, Cheyenne, and Deuel.

(2) There shall be fifty-seven judges of the county court. Each district listed in this section shall be served by at least one judge of the county court. Judges in office on the effective date of this act shall continue to serve in the districts they are serving on such date. On or after the effective date of this act any vacancy shall be determined as prescribed in section 24-810. (2) Districts 1, 12, and 18 shall have one county judge. Districts 3, 4, 6, 7, 8, 10, 11, 14, 15, 16, 17, 19, and 20 shall have two county judges. Districts 2, 5, 9, 13, and 21 shall have three county judges.

(3) Judge of the county court shall include any person appointed to the office of county judge or municipal judge prior to July 1, 1985, pursuant to Article V, section 21, of the Nebraska Constitution.

(4) Any person serving as a municipal judge in district 3 or 4 immediately prior to July 1, 1985, shall be a judge of the county court and shall be empowered to hear only those cases as provided in section 24-517 which the presiding judge of the county court for such district, with the concurrence of the Supreme Court, shall direct. Any vacancy occurring after July 1, 1985, which results in a decrease in the number of municipal court judges authorized immediately prior to July 1, 1985, for a city of the primary or metropolitan class shall correspondingly increase the number of county court judges. for the county court district in which the municipal court was located.

Sec. 4. That section 24-516, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-516. In the event of a vacancy in the office of county judge, or the disqualification, absence, or the temporary incapacity of a county judge, the Chief Justice of the Supreme Court may designate a county judge from another district to temporarily perform the duties of the office. The Chief Justice also may assign a county judge to temporarily perform duties in another district when in his or her opinion such assignment would be beneficial to the administration of justice.

A county judge may appoint by order a consenting district judge residing in the district to act as county judge in specific instances on any matter over which the county court has determined that it has jurisdiction over the parties and subject matter. The appointed district judge shall have power to make any

order or do any act relative to any suit, judicial matter, or proceeding or to any special matter which the county judge of such county could make or do. Any such order or act shall have the same effect as if made or done by the county judge of such county. A district judge shall not hear any appeals of matters in which he or she acted as a county judge. A copy of the order of appointment shall be filed in each action in which a district judge acts as a county judge.

Sec. 5. There is hereby created the Judicial Resources Commission consisting of: (1) Three judges, including one district court judge, one county court judge, and one judge of any court, all of whom shall be appointed by the Supreme Court; (2) three members of the Nebraska State Bar Association who shall have practiced law in this state for at least ten years and who shall be appointed by the Executive Council of the Nebraska State Bar Association; (3) three citizens appointed by the Governor, none of whom shall be (a) a Justice or Judge of the Supreme Court or a judge of any court, active or retired, (b) a member of the Nebraska State Bar Association, or (c) an immediate family member of any person listed in subdivisions (a) and (b) of this subdivision; and (4) a Judge of the Supreme Court who represents one of the six judicial districts prescribed in Article V, section 5, of the Nebraska Constitution appointed by the Supreme Court, who shall serve as chairperson of the commission.

Sec. 6. The term of office of each member of the Judicial Resources Commission shall be four years. In the event of a vacancy, the vacancy shall be filled by appointment in the same manner as the original members are appointed, and the individuals so appointed shall serve for the balance of the original term. Any member of the commission shall be eligible for reappointment for an additional term without regard to the number of years that such individual has served as a member of the commission.

Sec. 7. Members of the Judicial Resources Commission shall serve without compensation, but they shall be reimbursed for all reasonable expenses incurred by them in connection with their duties as members of the commission as provided in sections 84-306.01 to 84-306.05 for state employees.

Sec. 8. The Judicial Resources Commission shall designate for each district or county judge vacancy a county seat as the primary service location. In designating primary service locations, the commission shall locate judges so as to provide maximum service to

all areas of the judicial district. No reimbursement shall be allowed for travel from the home of an individual judge to his or her primary service location or from such location to his or her home.

Sec. 9. That section 24-810, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-810. (1) In the event of the death, retirement, resignation, or removal of any district or county judge, the failure of a district or county judge to be retained in office, or an increase in the number of district or county judgeships authorized by law and except in those judicial districts required to be served by at least one county judge pursuant to section 24-503 and one district court judge pursuant to section 5-105, the Supreme Court shall, after holding a public hearing, determine whether a judicial vacancy exists. The determination shall be based upon the Supreme Court's analysis of the caseload, travel time, and other factors necessary to assure efficiency and service. After a determination that a judicial vacancy exists, the declaration of the location of the vacancy shall be made by the Judicial Resources Commission. The Supreme Court shall adopt and promulgate rules and regulations on the procedures to be followed in making a determination of the existence of and declaration of the location of judicial vacancies.

(2) When the location of a district or county a judicial vacancy is declared by the Judicial Resources Commission or in the event of a judicial vacancy in any other court, the Clerk of the Supreme Court shall contact the chairperson of the judicial nominating commission relating to such vacancy, and shall ascertain from him or her a time and place for the first meeting of such judicial nominating commission, at which time a public hearing will be held. He or she shall thereupon notify each commission member in writing of the time and place of said the meeting and shall also cause appropriate notice to be published by various news media of the time and place of the public hearing of said the judicial nominating commission, and of the interest of said the commission in receiving information relating to qualified candidates for said the judicial vacancy. At least two days prior to the public hearing, the chairperson shall release to the public the names of lawyers who have signified in writing their willingness to serve as a judge if nominated and appointed to such judgeship, and immediately prior to the public hearing the chairperson shall release the names of any

additional lawyers who have so signified. Any member of the public shall be entitled to attend the public hearing to express, either orally or in writing, his or her views concerning candidates for the judicial vacancy.

(3) After the public hearing the nominating commission shall hold such additional private or confidential meetings as it determines to be necessary. Additional information may be submitted in writing to the judicial nominating commission, at any time prior to its selection of qualified candidates to fill said the vacancy. The judicial nominating commission shall make such independent investigation and inquiry as it considers necessary or expedient to determine the qualifications of candidates for the judicial vacancy and shall take such action as it deems necessary or expedient to encourage qualified candidates to accept judicial office or nomination for said judicial office.

(4) (2) The commission may, before or after the hearing provided for in subsection (1) (2) of this section, institute a search for additional candidates. If additional candidates are obtained, the commission shall hold further public hearings in the same manner as provided in subsection (1) (2) of this section.

(5) (3) The names of candidates shall be submitted to the Governor within sixty days after a declaration of the location of a district or county judicial vacancy by the Judicial Resources Commission or in the event of a judicial vacancy in any other court, after a judicial vacancy occurred if one public hearing is held and within ninety days if more than one public hearing is held.

(6) (4) The first public hearing provided for in this section shall be held within forty-five days after the location of a vacancy has been declared or the vacancy occurs, as the case may be.

Sec. 10. That section 25-1062.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1062.01. (1) The words Director of Water Resources as used in this section and in sections 25-1064, ~~to~~ 25-1066 25-2159, 25-2160, and 46-230 mean the Director for the Department of Water Resources, State of Nebraska, his or her successor in office, or any agent, servant, employee, or officer of the State of Nebraska, now or hereafter exercising any powers or duties with respect to the administration of the irrigation water in the state, who may be a party in any court of the state in an action where when the relief

demanded involves the delivery of irrigation water.

(2) ~~Wherever~~ Whenever notice by either registered or certified letter to an appropriator is required in the sections above named, the address of ~~said the~~ appropriator shall be that recorded in the office of the Department of Water Resources under the ~~provisions of~~ section 46-230.

Sec. 11. That section 25-1064, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1064. (1) The injunction may be granted at the time of commencing the action; or at any time afterward before judgment; by the Supreme Court or any judge thereof. ~~No, PROVIDED, no~~ restraining order or temporary injunction should be granted at the time of the commencement of the action; if the relief demanded involves the delivery of irrigation water and the Director of Water Resources, as defined in section 25-1062.01, is a party, except in accordance with the procedure ~~as hereinafter provided prescribed in~~ subsection (5) of this section.

(2) No temporary injunction may be granted without notice to the adverse party.

(3) Any judge of the The district court, or any judge thereof, except where when the relief demanded involves the delivery of irrigation water and the director is a party, may upon it appearing satisfactorily to the court or judge, by the affidavit of the plaintiff or his agent, that the plaintiff is entitled thereto, grant a temporary restraining order without notice to the adverse party or his or her attorney only if (a) it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his or her attorney can be heard in opposition and (b) the applicant or his or her attorney certifies to the court in writing the efforts, if any, which have been made to give such notice and the reasons supporting the applicant's claim that such notice shall not be required, and direct that a reasonable notice be given to the party against whom said restraining order is issued, to attend for such purpose at a specified time and place before the district court or any judge thereof; to show cause why a temporary injunction should not be issued; said restraining order to remain in full force until such hearing is had by the district court or any judge thereof-

Every temporary restraining order granted

without notice shall: (i) Be endorsed with the date and hour of issuance; (ii) be filed immediately in the office of the clerk of the district court and entered of record; (iii) define the injury and state why the injury is irreparable and why the order was granted without notice; and (iv) expire by its terms within such time after entry, not to exceed ten days, as the court fixes unless within such fixed time period the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents to an extension for a longer period. The reasons for the extension shall be entered of record. If a temporary restraining order is granted without notice, the motion for a temporary injunction shall be heard at the earliest possible time in the district court and shall take precedence over all matters except older matters of the same character. When the motion for a temporary injunction comes up for hearing, the party who obtained the temporary restraining order shall proceed with the application for a temporary injunction, and if he or she does not do so, the district court shall dissolve the temporary restraining order. On two day's notice to the party who obtained the temporary restraining order without notice or on such shorter notice to such party as the district court may prescribe, the adverse party may appear and move for the dissolution or modification of the order, and in that event, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(3) (4) In the absence from the county of said the district judges, the county any judge of the county court, thereof, except where when the relief demanded involves the delivery of irrigation water and the director is a party, may, upon it appearing satisfactorily to the court or judge, by the affidavit of the plaintiff or his agents, that the plaintiff is entitled thereto, grant a the temporary restraining order without notice to the adverse party or his or her attorney only if (a) it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his or her attorney can be heard in opposition and (b) the applicant or his or her attorney certifies to the court in writing the efforts, if any, which have been made to give such notice and the reasons supporting the applicant's claim that such notice shall not be required. The judge of the county court shall and direct that a reasonable notice be given to the party, against whom the said temporary

restraining order is issued, to attend for such purpose at a specified time or place before the district court or any judge thereof, to show cause why a temporary injunction should not be issued, and may in the meantime restrain such party. Such time of hearing shall not be fixed in the first instance by the county judge more than ten days from the time of granting such temporary restraining order.

Every temporary restraining order granted without notice shall: (i) Be endorsed with the date and hour of issuance; (ii) be filed immediately in the office of the clerk of the district court and entered of record; (iii) define the injury and state why the injury is irreparable and why the order was granted without notice; and (iv) expire by its terms within such time after entry, not to exceed ten days, as the judge of the county court fixes unless within such fixed time period the order, for good cause shown, is extended by the district court for a like period or unless the party against whom the order is directed consents to an extension for a longer period. The reasons for the extension shall be entered of record.

~~(4)~~ (5) The Supreme Court or any judge thereof, the district court or any judge thereof, or a judge of the county court, the county judge, if and when he or she has jurisdiction, shall have no power, where when the relief demanded involves the delivery of irrigation water and the director is a party, to grant a restraining order or temporary injunction at the time of the commencement of the action, except where when notice by either registered or certified letter has been mailed seventy-two hours prior to the time of hearing to the director and the division engineer in the water division in which said the action is brought and, in the manner provided in section 25-1062.01, to all appropriators whose rights to the delivery of irrigation water might in any manner be affected, of the time and place of said the hearing. At the hearing on the restraining order or temporary injunction, the director, appropriators, or riparian owners shall be are entitled to be heard, in person or by their attorney or attorneys, on the question of whether the restraining order should be granted and, if so, in what amount the bond or undertaking is to be fixed.

~~(5)~~ (6) Any person, natural or artificial, injured, or likely to be injured by the granting of a restraining order may intervene in said the action at any stage of the proceedings and become a party to the litigation if it involves the delivery of irrigation

water and the director is a party.

Sec. 12. Every order granting an injunction and every restraining order shall: (1) Set forth the reasons for its issuance; (2) be specific in terms; (3) describe in reasonable detail, and not by reference to the petition or other document, the act or acts sought to be restrained; and (4) be binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Sec. 13. Sections 10 to 13 of this act shall in no way limit a person's right to an injunction or temporary restraining order if such remedies are specifically authorized by statute.

Sec. 14. That section 42-357, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-357. The court may order either party to pay to the clerk a sum of money for the temporary support and maintenance of the other party and minor children if any are affected by the action and to enable such party to prosecute or defend the action. The court may make such order after service of process and claim for temporary allowances is made in the petition or by motion by the petitioner or by the respondent in a responsive pleading; but no such order shall be entered before three days after notice of hearing has been served on the other party or notice waived. During the pendency of any proceeding under sections 42-347 to 42-379 after the petition is filed, upon application of either party and if the accompanying affidavit of the party or his or her agent shows to the court that the party is entitled thereto, the court may issue ex parte orders (1) restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of real or personal property except in the usual course of business or for the necessities of life, and the party against whom such order is directed shall upon order of the court account for all unusual expenditures made after such order is served upon him or her, (2) enjoining any party from molesting or disturbing the peace of the other party or any minor children affected by the action, and (3) determining the temporary custody of any minor children of the marriage, except that no restraining order enjoining any party from molesting or disturbing the peace of any minor child shall issue unless, at the same time, the court determines that the party requesting such order shall

have temporary custody of such minor child. Ex parte orders issued pursuant to subdivision (1) of this section shall remain in force for no more than ten days or until a hearing is held thereon, whichever is earlier. After motion, notice to the party, and hearing, the court may order either party excluded from the premises occupied by the other upon a showing that physical or emotional harm would otherwise result. Any restraining order issued excluding either party from the premises occupied by the other shall specifically set forth the location of the premises and shall be served upon the adverse party by the sheriff in the manner prescribed for serving a summons, and a return thereof shall be filed in district court. Any person who knowingly violates such an order after service shall be guilty of a Class IIIA misdemeanor. In the event a restraining order enjoining any party from molesting or disturbing the peace of any minor children is issued, upon application and affidavit setting out the reason therefor, the court shall schedule a hearing within seventy-two hours to determine whether the order regarding the minor children shall remain in force. Section 25-1064 shall not apply to issuance of ex parte orders pursuant to this section.

Sec. 15. That section 43-2,125, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-2,125. (1) Except as provided in subsections (2) and (3) of this section, whenever Whenever any judge of a separate juvenile court shall be disabled or disqualified to act in any cause before him or her, or shall be temporarily absent from the county or whenever it would be beneficial to the administration of justice, the presiding judge of the district court may designate and appoint a judge of the district court to serve during such absence or disqualification any period as necessary; or the Chief Justice of the Supreme Court, in the same matter as described for the reasons set out in section 24-516, may designate and appoint a judge of the county court any juvenile court as defined in subdivision (4) of section 43-245 to serve as judge of the separate juvenile court during such absence or disqualification period.

(2) A judge of the county court shall only be appointed to serve as judge of the separate juvenile court of a county having more than three hundred thousand persons if such separate juvenile court does not have three judges serving such court.

(3) After July 1, 1990, no judge of the county

court shall be appointed to serve as a judge of the separate juvenile court.

Sec. 16. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 17. That original sections 24-312, 24-503, 24-516, 24-810, 25-1062.01, 25-1064, 42-357, and 43-2,125, Reissue Revised Statutes of Nebraska, 1943, and section 5-105, Revised Statutes Supplement, 1985, and also sections 25-1065 and 25-1066, Reissue Revised Statutes of Nebraska, 1943, are repealed.