

LEGISLATIVE BILL 576

Approved by the Governor April 26, 1971

Introduced by Fred W. Carstens, 30th District

AN ACT to amend sections 24-324, 25-404, 25-405, 25-406, 25-407, 25-408, 25-409, 25-410, 25-501, 25-503, and 25-504, Reissue Revised Statutes of Nebraska, 1943, relating to civil procedure, district court; to provide that district courts shall have statewide jurisdiction and to provide the proper venue for actions; to provide for issuance of summons by any court having jurisdiction and service of the summons in any county in this state; to provide for transfer of any civil action from any district court to the district court of any other county in this state in the interest of justice; and to repeal the original sections.

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

Section 1. That section 24-324, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-324. The state may be sued in the district court of the county wherein the Capital is situated in any matter founded upon or growing out of a contract, express or implied, originally authorized or subsequently ratified by the Legislature, or founded upon any law of the state. The petition in such a case shall be as provided in section 24-320, summons shall issue and be served in the same manner as hereinbefore provided, and the rules of pleading and practice in regard to other civil actions in the district court shall be observed in all actions by or against the state, as far as applicable except as otherwise herein provided; Provided, that when an action has been commenced in a county other than as specified herein, the court in which the action has been commenced shall have jurisdiction over such action, but upon timely motion by a defendant, the court shall transfer the action to the proper court in the county in which the action should or might have been commenced as herein provided. The court in the county to which the action is transferred, in its discretion, may order the plaintiff to pay to the defendant all reasonable expenses, including attorney fees of the defendant or defendants, incurred because of the improper venue or in

proceedings to transfer such action.

Sec. 2. That section 25-404, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-404. Actions for the following causes must be brought in the county where the cause or some part thereof arose: (1) An action for the recovery of a fine, forfeiture, or penalty, imposed by a statute, except that when it is imposed for an offense committed on a river, or other stream of water, or road, which is the boundary of two or more counties, the action may be brought in any county bordering on such river, watercourse or road and opposite to where the offense was committed; (2) an action against a public officer, for an act done by him in virtue of or under color of his office, or for any neglect of his official duty; and (3) an action on the official bond or undertaking of a public officer; Provided, that when an action has been commenced in a county other than as specified herein, the court in which the action has been commenced shall have jurisdiction over such action, but upon timely motion by a defendant the court shall transfer the action to the proper court in the county in which the action should or might have been commenced as herein provided. The court in the county to which the action is transferred in its discretion, may order the plaintiff to pay to the defendant all reasonable expenses, including attorney fees of the defendant or defendants, incurred because of the improper venue or in proceedings to transfer such action.

Sec. 3. That section 25-405, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-405. Actions against corporations created by the laws of this state may be brought as follows:

(1) Any action, other than those mentioned in sections 25-401 to 25-403, may be brought in the county in which the corporation is situated or has its principal office or place of business;

(2) Any action, other than those mentioned in said sections, may be brought against an insurance corporation created by the laws of this state, in the county where the cause of action or some part thereof arose, or in the county where any contract or portion of a contract entered into by such insurance corporation has been violated or is to be performed; and

(3) Any action at law or in equity growing out of or pertaining to the issuance, assignment, sale or transfer, or the negotiation for the issuance, assignment, sale or transfer, by any corporation created by the laws of this state, of any certificates of capital stock, treasury stock, shares, notes, bonds, debentures, certificates of participation, units, undivided interests or other obligations or evidences of indebtedness or of title which constitutes evidence of or is secured by title to, interest in, or lien upon any or all of the property or profits of the issuer, or any instrument evidencing or representing any right to participate or share in the profits or earnings or the distribution of assets of any business carried on for profit, or other instruments in the nature thereof, by whatsoever name known or called, or undivided interests in the capital, property, assets, profits or business of any such corporation, whether evidenced by written or printed certificates or not, may be brought in the county where the cause of action or some part thereof arose, or in the county where any contract or portion of a contract entered into by said corporation and pertaining to said issuance, assignment, sale or transfer as described, has been violated or is to be performed; Provided, that when an action has been commenced in a county other than as specified herein, the court in which the action has been commenced shall have jurisdiction over such action, but upon timely motion by a defendant the court shall transfer the action to the proper court in the county in which the action should or might have been commenced as herein provided. The court in the county to which the action is transferred, in its discretion, may order the plaintiff to pay to the defendant all reasonable expenses, including attorney fees of the defendant or defendants, incurred because of the improper venue or in proceedings to transfer such action.

Sec. 4. That section 25-406, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-406. An action against a railroad company, or an owner of a line of mail stages or other coaches, a bus company, for an injury to person or property upon the road or line, or upon a liability as a carrier, may be brought in any county through or into which the road or line passes; Provided, that service of summons upon bus companies may be made as upon other persons, or by leaving a copy of the summons by the proper officer with any ticket agent, chauffeur or driver of said bus company or left at the usual place of doing business of

said company within said county; and provided further, that when an action has been commenced in a county other than as specified herein, the court in which the action has been commenced shall have jurisdiction over such action, but upon timely motion by a defendant the court shall transfer the action to the proper court in the county in which the action should or might have been commenced as herein provided. The court in the county to which the action is transferred, in its discretion, may order the plaintiff to pay to the defendant all reasonable expenses, including attorney fees of the defendant or defendants, incurred because of the improper venue or in proceedings to transfer such action.

Sec. 5. That section 25-407, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-407. An action, other than one of those mentioned in sections 25-401 to 25-403, against a turnpike road company may be brought in any county in which any part of the road lies; Provided, that when an action has been commenced in a county other than as specified herein, the court in which the action has been commenced shall have jurisdiction over such action, but upon timely motion by a defendant the court shall transfer the action to the proper court in the county in which the action should or might have been commenced as herein provided. The court in the county to which the action is transferred, in its discretion, may order the plaintiff to pay to the defendant all reasonable expenses, including attorney fees of the defendant or defendants, incurred because of the improper venue or in proceedings to transfer such action.

Sec. 6. That section 25-408, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-408. An action, other than one of those mentioned in sections 25-401 to 25-403, against a nonresident of this state or a foreign corporation may be brought in any county in which there may be property of, or debts owing to said defendant, or where said defendant may be found; but if such defendant be a foreign insurance company, the action may be brought in any county where the cause, or some part thereof, arose; Provided, that when an action has been commenced in a county other than as specified herein, the court in which the action has been commenced shall have jurisdiction over such action, but upon timely motion by

a defendant the court shall transfer the action to the proper court in the county in which the action should or might have been commenced as herein provided. The court in the county to which the action is transferred, in its discretion, may order the plaintiff to pay to the defendant all reasonable expenses, including attorney fees of the defendant or defendants, incurred because of the improper venue or in proceedings to transfer such action.

Sec. 7. That section 25-409, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-409. Except as may be otherwise more specifically provided by law, every action for tort brought against a resident or residents of this state must be brought in the county where the cause of action arose, or in the county where the defendant, or some one of the defendants, resides, or in the county where the plaintiff resides and the defendant, or some one of the defendants, may be summoned. Every other action must be brought in the county in which the defendant, or some one of the defendants, resides or may be summoned: Provided, that when an action has been commenced in a county other than as specified herein, the court in which the action has been commenced shall have jurisdiction over such action, but upon timely motion by a defendant the court shall transfer the action to the proper court in the county in which the action should or might have been commenced as herein provided. The court in the county to which the action is transferred, in its discretion, may order the plaintiff to pay to the defendant all reasonable expenses, including attorney fees of the defendant or defendants, incurred because of the improper venue or in proceedings to transfer such action.

Sec. 8. That section 25-410, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~25-410. In all cases in which it shall be made to appear to the court that a fair and impartial trial cannot be had in the county where the suit is pending; or when the judge is interested or has been a counsel in the case or subject matter thereof; or is related to either of the parties; or otherwise disqualified to sit; the court may on application of either party, change the place of trial to some adjoining county, wherein such impartial trial can be had; but if the objection be against all the counties of the district, then to the~~

nearest county in the adjoining district. For the convenience of the parties and witnesses or in the interest of justice, a district court of any county may transfer any civil action to the district court of any other county in this state.

Sec. 9. That section 25-501, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-501. A civil action must be commenced by filing in the office of the clerk of the a proper court a petition, and causing a summons to be issued thereon.

Sec. 10. That section 25-503, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-503. The summons shall be dated the day it is issued. It shall be directed to the sheriff of the county, designated by the plaintiff for service of summons and command him to notify the defendant or defendants named therein that he or they have been sued, and must answer the petition filed by the plaintiff, giving his name at the time stated therein, or the petition will be taken as true, and judgment rendered accordingly. Where the action is for the recovery of money only, there shall be endorsed on the writ the amount to be furnished in the praecipe, for which, with interest, judgment will be taken if the defendant fail to answer. If the defendant fail to appear, judgment shall not be rendered for a larger amount and the costs.

Sec. 11. That section 25-504, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-504. When the action is rightly brought in any county court having jurisdiction, according to the provisions of this code, a summons shall be issued to any other county, against any one or more of the defendants at the plaintiff's request.

Sec. 12. That original sections 24-324, 25-404, 25-405, 25-406, 25-407, 25-408, 25-409, 25-410, 25-501, 25-503, and 25-504, Reissue Revised Statutes of Nebraska, 1943, are repealed.