

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 808

Introduced by Conrad, 46; Davis, 43; Harms, 48; Seiler, 33;
Wightman, 36.

Read first time January 10, 2014

Committee: Judiciary

A BILL

1 FOR AN ACT relating to attorneys at law; to amend sections 7-201,
2 7-202, 7-203, 7-204, 7-206, 7-207, 7-208, and 7-209,
3 Reissue Revised Statutes of Nebraska, section 29-3927,
4 Revised Statutes Cumulative Supplement, 2012, and section
5 59-1608.04, Revised Statutes Supplement, 2013; to change
6 provisions relating to the Legal Education for Public
7 Service Loan Repayment Act; to define and redefine terms;
8 to provide duties; to transfer funds from the State
9 Settlement Cash Fund; to harmonize provisions; and to
10 repeal the original sections.

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

1 Section 1. Section 7-201, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 7-201 Sections 7-201 to 7-209 and section 6 of this act
4 shall be known and may be cited as the Legal Education for Public
5 Service and Rural Practice Loan Repayment Act.

6 Sec. 2. Section 7-202, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 7-202 The Legislature finds that many attorneys graduate
9 from law school with substantial educational debt that prohibits many
10 from considering public legal service work or work in less-populated
11 rural areas of Nebraska. A need exists for public legal service
12 entities and rural clients to hire competent attorneys. The public is
13 better served by competent and qualified attorneys working in the
14 area of public legal service and serving underserved rural areas.
15 Programs providing educational loan forgiveness will encourage law
16 students and other attorneys to seek employment in the area of public
17 legal service and in designated legal profession shortage areas in
18 rural Nebraska and will enable public legal service entities and
19 rural communities to attract and retain qualified attorneys.

20 Sec. 3. Section 7-203, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 7-203 For purposes of the Legal Education for Public
23 Service and Rural Practice Loan Repayment Act:

24 (1) Board means the Legal Education for Public Service
25 and Rural Practice Loan Repayment Board;

1 (2) Designated legal profession shortage area means a
2 rural area located within any county in Nebraska having a population
3 of less than fifteen thousand inhabitants and not included within a
4 metropolitan statistical area as defined by the United States
5 Department of Commerce, Bureau of the Census, and determined by the
6 board to be underserved by available legal representation;

7 ~~(2)~~(3) Educational loans means loans received as an
8 educational benefit, scholarship, or stipend toward a juris doctorate
9 degree and either (a) made, insured, or guaranteed by a governmental
10 unit or (b) made under a program funded in whole or in part by a
11 governmental unit or nonprofit institution; and

12 ~~(3)~~(4) Public legal service means providing legal
13 service to indigent persons while employed by a tax-exempt charitable
14 organization.

15 Sec. 4. Section 7-204, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 7-204 The Legal Education for Public Service and Rural
18 Practice Loan Repayment Board is created. The board shall consist of
19 the director of Legal Aid of Nebraska, the deans of Creighton School
20 of Law and the University of Nebraska College of Law, a student from
21 each law school selected by the dean of the law school, a member of
22 the Nebraska State Bar Association who practices in a designated
23 legal profession shortage area selected by the president of the
24 association, and the chief counsel of the Commission on Public
25 Advocacy.

1 Sec. 5. Section 7-206, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 7-206 The board shall develop and recommend to the
4 Commission on Public Advocacy rules and regulations that will govern
5 the legal education for public legal service and rural practice loan
6 repayment program. The rules and regulations shall include:

7 (1) Recipients shall be ~~full-time, either:~~ (a) Full-time,
8 salaried attorneys working for a tax-exempt charitable organization
9 and whose primary duties are public legal service or (b) full-time
10 attorneys primarily serving in a designated legal profession shortage
11 area;

12 (2) Loan applicants shall pay an application fee
13 established by the rules and regulations at a level anticipated to
14 cover all or most of the administrative costs of the program. All
15 application fees shall be remitted to the State Treasurer for credit
16 to the Legal Education for Public Service and Rural Practice Loan
17 Repayment Fund. Every effort shall be made to minimize administrative
18 costs and the application fee;

19 (3) The maximum annual loan amount, which initially shall
20 not exceed six thousand dollars per year per recipient, shall be an
21 amount which is sufficient to fulfill the purposes of recruiting and
22 retaining public legal service attorneys in occupations and areas
23 with unmet needs, including public legal service attorneys ~~to work in~~
24 ~~rural areas and attorneys~~ with skills in languages other than English
25 and attorneys committed to working in designated legal profession

1 shortage areas. The board may recommend adjustments of the loan
2 amount annually to the commission to account for inflation and other
3 relevant factors;

4 (4) Loans shall be made only to refinance existing
5 educational loans;

6 (5) A general program structure of loan forgiveness shall
7 be established that qualifies for the tax benefits provided in
8 section 108(f) of the Internal Revenue Code, as defined in section
9 49-801.01; and

10 (6) Other criteria for loan eligibility, application,
11 payment, and forgiveness necessary to carry out the purposes of the
12 Legal Education for Public Service and Rural Practice Loan Repayment
13 Act.

14 Sec. 6. The board shall periodically determine and
15 identify designated legal profession shortage areas within Nebraska.
16 In making such designations the board shall consider, after
17 consultation with other appropriate agencies concerned with legal and
18 rural services and with appropriate professional organizations, among
19 other factors:

20 (1) The latest reliable statistical data available
21 regarding the number of attorneys practicing in an area and the
22 population served by such attorneys;

23 (2) Distances between client populations and attorney
24 locations;

25 (3) Particular local needs for legal services;

1 (4) Age or incapacity of local attorneys providing
2 services and scope of practice being provided; and

3 (5) Past and future demographic trends in an area.

4 Sec. 7. Section 7-207, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 7-207 The Commission on Public Advocacy shall accept
7 applications for loan forgiveness on an annual basis from qualified
8 persons and shall present those applications to the board for its
9 consideration. The board shall make recommendations for loans to the
10 commission, and the commission shall certify the eligible recipients
11 and the loan amount per recipient. The loans awarded to the
12 recipients shall come from funds appropriated by the Legislature and
13 any other funds that may be available from the Legal Education for
14 Public Service and Rural Practice Loan Repayment Fund.

15 Sec. 8. Section 7-208, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 7-208 The Commission on Public Advocacy may solicit and
18 receive donations from law schools, corporations, nonprofit
19 organizations, bar associations, bar foundations, law firms,
20 individuals, or other sources for purposes of the Legal Education for
21 Public Service and Rural Practice Loan Repayment Act. The donations
22 shall be remitted to the State Treasurer for credit to the Legal
23 Education for Public Service and Rural Practice Loan Repayment Fund.

24 Sec. 9. Section 7-209, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 7-209 The Legal Education for Public Service and Rural
2 Practice Loan Repayment Fund is created. The fund shall consist of
3 funds donated to the legal education for public legal service and
4 rural practice loan repayment program pursuant to section 7-208 and
5 application fees collected under the Legal Education for Public
6 Service and Rural Practice Loan Repayment Act. Any money in the fund
7 available for investment shall be invested by the state investment
8 officer pursuant to the Nebraska Capital Expansion Act and the
9 Nebraska State Funds Investment Act.

10 Sec. 10. Section 29-3927, Revised Statutes Cumulative
11 Supplement, 2012, is amended to read:

12 29-3927 (1) With respect to its duties under section
13 29-3923, the commission shall:

14 (a) Adopt and promulgate rules and regulations for its
15 organization and internal management and rules and regulations
16 governing the exercise of its powers and the fulfillment of its
17 purpose;

18 (b) Appoint and abolish such advisory committees as may
19 be necessary for the performance of its functions and delegate
20 appropriate powers and duties to them;

21 (c) Accept and administer loans, grants, and donations
22 from the United States and its agencies, the State of Nebraska and
23 its agencies, and other sources, public and private, for carrying out
24 the functions of the commission;

25 (d) Enter into contracts, leases, and agreements

1 necessary, convenient, or desirable for carrying out its purposes and
2 the powers granted under this section with agencies of state or local
3 government, corporations, or persons;

4 (e) Acquire, hold, and dispose of personal property in
5 the exercise of its powers;

6 (f) Provide legal services to indigent persons through
7 the divisions in section 29-3930; and

8 (g) Adopt guidelines and standards for county indigent
9 defense systems, including, but not limited to, standards relating to
10 the following: The use and expenditure of funds appropriated by the
11 Legislature to reimburse counties which qualify for reimbursement;
12 attorney eligibility and qualifications for court appointments;
13 compensation rates for salaried public defenders, contracting
14 attorneys, and court-appointed attorneys and overall funding of the
15 indigent defense system; maximum caseloads for all types of systems;
16 systems administration, including rules for appointing counsel,
17 awarding defense contracts, and reimbursing defense expenses;
18 conflicts of interest; continuing legal education and training; and
19 availability of supportive services and expert witnesses.

20 (2) The standards adopted by the commission under
21 subdivision (1)(g) of this section are intended to be used as a guide
22 for the proper methods of establishing and operating indigent defense
23 systems. The standards are not intended to be used as criteria for
24 the judicial evaluation of alleged misconduct of defense counsel to
25 determine the validity of a conviction. They may or may not be

1 relevant in such judicial evaluation, depending upon all the
2 circumstances.

3 (3) With respect to its duties related to the provision
4 of civil legal services to eligible low-income persons, the
5 commission shall have such powers and duties as described in sections
6 25-3001 to 25-3004.

7 (4) The commission may adopt and promulgate rules and
8 regulations governing the Legal Education for Public Service and
9 Rural Practice Loan Repayment Act which are recommended by the Legal
10 Education for Public Service and Rural Practice Loan Repayment Board
11 pursuant to the act. The commission shall have the powers and duties
12 provided in the act.

13 Sec. 11. Section 59-1608.04, Revised Statutes Supplement,
14 2013, is amended to read:

15 59-1608.04 (1) The State Settlement Cash Fund is created.
16 The fund shall be maintained by the Department of Justice and
17 administered by the Attorney General. Except as otherwise provided by
18 law, the fund shall consist of all recoveries received pursuant to
19 the Consumer Protection Act, including any money, funds, securities,
20 or other things of value in the nature of civil damages or other
21 payment, except criminal penalties, whether such recovery is by way
22 of verdict, judgment, compromise, or settlement in or out of court,
23 or other final disposition of any case or controversy, or any other
24 payments received on behalf of the state by the Department of Justice
25 and administered by the Attorney General for the benefit of the state

1 or the general welfare of its citizens, but excluding all funds held
2 in a trust capacity where specific benefits accrue to specific
3 individuals, organizations, or governments. The fund may be expended
4 for any allowable legal purposes as determined by the Attorney
5 General. Transfers from the State Settlement Cash Fund may be made at
6 the direction of the Legislature to the Nebraska Capital Construction
7 Fund or to the Legal Education for Public Service and Rural Practice
8 Loan Repayment Fund. To provide necessary financial accountability
9 and management oversight, revenue from individual settlement
10 agreements or other separate sources credited to the State Settlement
11 Cash Fund may be tracked and accounted for within the state
12 accounting system through the use of separate and distinct funds,
13 subfunds, or any other available accounting mechanism specifically
14 approved by the Accounting Administrator for use by the Department of
15 Justice. Any money in the fund available for investment shall be
16 invested by the state investment officer pursuant to the Nebraska
17 Capital Expansion Act and the Nebraska State Funds Investment Act.

18 (2) The State Treasurer shall transfer two million five
19 hundred thousand dollars from the State Settlement Cash Fund to the
20 Nebraska Capital Construction Fund on July 1, 2013, or as soon
21 thereafter as administratively possible.

22 (3) The State Treasurer shall transfer five hundred
23 thousand dollars from the State Settlement Cash Fund to the Legal
24 Education for Public Service and Rural Practice Loan Repayment Fund
25 on August 1, 2014, or as soon thereafter as administratively

1 possible.

2 Sec. 12. Original sections 7-201, 7-202, 7-203, 7-204,
3 7-206, 7-207, 7-208, and 7-209, Reissue Revised Statutes of Nebraska,
4 section 29-3927, Revised Statutes Cumulative Supplement, 2012, and
5 section 59-1608.04, Revised Statutes Supplement, 2013, are repealed.