

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 145

Introduced by Hansen, 26.

Read first time January 09, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to fines and costs; to amend sections 29-2206,
2 29-2206.01, 29-2279, 29-2404, 29-2412, and 60-692, Reissue Revised
3 Statutes of Nebraska, and section 60-4,100, Revised Statutes
4 Cumulative Supplement, 2016; to provide for a hearing to determine a
5 person's financial ability to pay fines or costs or a traffic
6 citation and to provide for community service; to change provisions
7 relating to procedures for suspending an operator's license; to
8 harmonize provisions; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2206, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-2206 (1)(a) ~~(1)~~ In all cases in which courts or magistrates have
4 now or may hereafter have the power to punish offenses, either in whole
5 or in part, by requiring the offender to pay fines or costs, or both,
6 such courts or magistrates may make it a part of the sentence that the
7 party stand committed and be imprisoned in the jail of the proper county
8 until the fines or costs are paid or secured to be paid or the offender
9 is otherwise discharged according to law, if the court or magistrate
10 determines at the sentencing hearing or a separate hearing prior to
11 sentencing that the offender has the financial ability to pay such fines
12 or costs. At such hearing the offender shall have the right to testify
13 and present evidence as to his or her income, assets, debts, or other
14 matters affecting his or her financial ability to pay. Following such
15 hearing and prior to imposing sentence, the court or magistrate shall
16 determine the offender's financial ability to pay the fines or costs,
17 including his or her financial ability to pay in installments under
18 subsection (2) of this section.

19 (b) If the court or magistrate determines that the offender is
20 financially able to pay the fines or costs and the offender refuses to
21 pay, the court or magistrate may:

22 (i) Make it a part of the sentence that the offender stand committed
23 and be imprisoned in the jail of the proper county until the fines or
24 costs are paid or secured to be paid or the offender is otherwise
25 discharged according to law; or

26 (ii) Order the offender, in lieu of paying such fines or costs, to
27 complete community service for a specified number of hours pursuant to
28 sections 29-2277 to 29-2279.

29 (c) If the court or magistrate determines that the offender is
30 financially unable to pay the fines or costs, the court or magistrate:

31 (i) Shall either:

1 (A) Impose a sentence without such fines or costs; or

2 (B) Enter an order pursuant to subdivision (1)(d) of this section
3 discharging the offender of such fines or costs; and

4 (ii) May order, as a term of the offender's sentence or as a
5 condition of probation, that he or she complete community service for a
6 specified number of hours pursuant to sections 29-2277 to 29-2279.

7 (d) An order discharging the offender of any fines or costs shall be
8 supported by written findings of fact that set forth the offender's
9 income, assets, and debts and the court's or magistrate's findings as to
10 the offender's financial ability to pay. The order shall be set forth in
11 or accompanied by a judgment entry. Such order shall operate as a
12 complete release of such fines or costs.

13 (2) If Notwithstanding subsection (1) of this section, when any
14 offender demonstrates to the court or magistrate determines, following a
15 hearing under subsection (1) of this section, that an offender he or she
16 is financially unable to pay such fines or costs in one lump sum but is
17 financially capable of paying in installments, the court or magistrate
18 shall make arrangements suitable to the court or magistrate and to the
19 offender by which the offender may pay in installments. The court or
20 magistrate shall enter an order specifying the terms of such arrangements
21 and the dates on which payments are to be made. When the judgment of
22 conviction provides for the suspension or revocation of a motor vehicle
23 operator's license and the court authorizes the payment of fines or costs
24 by installments, the revocation or suspension shall be effective as of
25 the date of judgment.

26 (3) As an alternative to a lump-sum payment or as an alternative or
27 in conjunction with installment payments, the court or magistrate may
28 deduct fines or costs from a bond posted by the offender to the extent
29 that such bond is not otherwise encumbered by a valid lien, levy,
30 execution, or assignment to counsel of record or the person who posted
31 the bond.

1 Sec. 2. Section 29-2206.01, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-2206.01 Installments provided for in section 29-2206 shall be
4 paid pursuant to the order entered by the court or magistrate. Any person
5 who fails to comply with the terms of such order shall be liable for
6 punishment for contempt, unless such person ~~he~~ has the leave of the court
7 or magistrate in regard to such noncompliance or such person requests a
8 hearing pursuant to section 29-2412 and establishes at such hearing that
9 he or she is financially unable to pay.

10 Sec. 3. Section 29-2279, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 29-2279 The length of a community service sentence shall be as
13 follows:

14 (1) Pursuant to section 29-2206, 29-2412, or section 6 of this act,
15 for an infraction, not less than four nor more than twenty hours;

16 (2) For a violation of a city ordinance that is an infraction and
17 not pursuant to section 29-2206, 29-2412, or section 6 of this act, not
18 less than four hours;

19 (3) ~~(1)~~ For a Class IV or Class V misdemeanor, not less than four
20 nor more than eighty hours;

21 (4) ~~(2)~~ For a Class III or Class IIIA misdemeanor, not less than
22 eight nor more than one hundred fifty hours;

23 (5) ~~(3)~~ For a Class I or Class II misdemeanor, not less than twenty
24 nor more than four hundred hours;

25 (6) ~~(4)~~ For a Class IIIA or Class IV felony, not less than two
26 hundred nor more than three thousand hours; and

27 (7) ~~(5)~~ For a Class III felony, not less than four hundred nor more
28 than six thousand hours.

29 Sec. 4. Section 29-2404, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 29-2404 In all cases of misdemeanor in which courts or magistrates

1 shall have power to fine any offender, and shall render judgment for such
2 fine, it shall be lawful to issue executions for the same, with the costs
3 taxed against the offender, to be levied on the goods and chattels of any
4 such offender, and, for want of the same, upon the body of the offender,
5 who shall, following a determination that the offender has the financial
6 ability to pay such fine pursuant to section 29-2412, thereupon be
7 committed to the jail of the proper county until the fine and costs be
8 paid, or secured to be paid, or the offender be otherwise discharged
9 according to law.

10 Sec. 5. Section 29-2412, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 29-2412 (1)(a) Any person arrested and brought into custody on a
13 warrant for failing to pay fines or costs, for failure to appear before a
14 court or magistrate on the due date of such fines or costs, or for
15 failure to comply with the terms of an order pursuant to sections 29-2206
16 and 29-2206.01, shall be entitled to a hearing on the first regularly
17 scheduled court date following the date of arrest. The purpose of such
18 hearing shall be to determine the person's financial ability to pay such
19 fines or costs. At the hearing, the person shall have the right to
20 testify and present evidence as to his or her income, assets, debts, or
21 other matters affecting his or her financial ability to pay. Following
22 the hearing, the court or magistrate shall determine the person's ability
23 to pay the fines or costs, including his or her financial ability to pay
24 by installment payments as described in section 29-2206.

25 (b) If the court or magistrate determines that the person is
26 financially able to pay the fines or costs and the person refuses to pay,
27 the court or magistrate may:

28 (i) Order the person to be confined in the jail of the proper county
29 until the fines or costs are paid or secured to be paid or the person is
30 otherwise discharged pursuant to subsection (5) of this section; or

31 (ii) Enter an order pursuant to subsection (2) of this section

1 discharging the person of such fines or costs and order the person to
2 complete community service for a specified number of hours pursuant to
3 sections 29-2277 to 29-2279.

4 (c) If the court or magistrate determines that the person is
5 financially unable to pay the fines or costs, the court or magistrate:

6 (i) Shall either:

7 (A) Enter an order pursuant to subsection (2) of this section
8 discharging the person of such fines or costs; or

9 (B) If the person is subject to an order to pay installments
10 pursuant to section 29-2206, the court or magistrate shall either enter
11 an order pursuant to subsection (2) of this section discharging the
12 person of such obligation or make any necessary modifications to the
13 order specifying the terms of the installment payments as justice may
14 require and that will enable the person to pay the fines or costs; and

15 (ii) May order the person to complete community service for a
16 specified number of hours pursuant to sections 29-2277 to 29-2279.

17 (2) An order discharging the person of fines or costs shall be
18 supported by written findings of fact that set forth the person's income,
19 assets, and debts and the court's or magistrate's findings as to the
20 person's financial ability to pay. The order shall be set forth in or
21 accompanied by a judgment entry. Such order shall operate as a complete
22 release of such fines or costs.

23 (3) ~~(1)~~ Whenever it is made satisfactorily to appear to the district
24 court, or to the county judge of the proper county, after all legal means
25 have been exhausted, that any person who ~~is subject to being~~ or is
26 confined in jail for any ~~fine~~ fines or costs of prosecution for any
27 criminal offense has no estate with which to pay such ~~fine~~ fines or
28 costs, it shall be the duty of such court or judge, on his or her own
29 motion or upon the motion of the person so confined, to discharge such
30 person from further imprisonment for such ~~fine~~ fines or costs, which
31 discharge shall operate as a complete release of such ~~fine~~ fines or

1 costs.

2 ~~(4) (2)~~ Nothing in this section shall authorize any person to be
3 discharged from imprisonment before the expiration of the time for which
4 he or she may be sentenced to be imprisoned, as part of his or her
5 punishment, ~~or when such person shall default on a payment due pursuant~~
6 ~~to an installment agreement arranged by the court.~~

7 ~~(5)(a) (3)~~ Any person held in custody for nonpayment of a ~~fine~~ fine
8 or costs or for default on an installment shall be entitled to a credit
9 on the ~~fine~~ fine, costs, or installment of one hundred fifty ninety
10 dollars for each day so held.

11 ~~(b)~~ In no case shall a person held in custody for nonpayment of a
12 ~~fine~~ fine or costs be held in such custody for more days than the
13 maximum number to which he or she could have been sentenced if the
14 penalty set by law includes the possibility of confinement.

15 Sec. 6.

16 (1) A person who has been ordered to pay fines or costs and who has
17 not been arrested or brought into custody as described in subdivision (1)
18 (a) of section 29-2412 but who believes himself or herself to be
19 financially unable to pay such fines or costs may request a hearing to
20 determine such person's financial ability to pay such fines or costs. The
21 hearing shall be scheduled on the first regularly scheduled court date
22 following the date of the request. Pending the hearing, the person shall
23 not be arrested or brought into custody for failure to pay such fines or
24 costs or failure to appear before a court or magistrate on the due date
25 of such fines or costs.

26 (2) At the hearing, the person shall have the right to testify and
27 present evidence as to his or her income, assets, debts, or other matters
28 affecting his or her financial ability to pay. Following the hearing, the
29 court or magistrate shall determine the person's financial ability to pay
30 the fines or costs, including his or her financial ability to pay in
31 installments as described in section 29-2206.

1 (3) If the court or magistrate determines that the person is
2 financially able to pay the fines or costs and the person refuses to pay,
3 the court or magistrate may:

4 (a) Deny the person's request for relief; or

5 (b) Enter an order pursuant to subsection (5) of this section
6 discharging the person of such fines or costs and order the person to
7 complete community service for a specified number of hours pursuant to
8 sections 29-2277 to 29-2279.

9 (4) If the court or magistrate determines that the person is
10 financially unable to pay the fines or costs, the court or magistrate:

11 (a) Shall either:

12 (i) Enter an order pursuant to subsection (5) of this section
13 discharging the person of such fines or costs; or

14 (ii) If the person is subject to an order to pay installments
15 pursuant to section 29-2206, the court or magistrate shall either enter
16 an order pursuant to subsection (5) of this section discharging the
17 person of such obligation or make any necessary modifications to the
18 order specifying the terms of the installment payments as justice may
19 require and that will enable the person to pay the fines or costs; and

20 (b) May order the person to complete community service for a
21 specified number of hours pursuant to sections 29-2277 to 29-2279.

22 (5) An order discharging the person of fines or costs shall be
23 supported by written findings of fact that set forth the person's income,
24 assets, and debts and the court's or magistrate's findings as to the
25 person's financial ability to pay. The order shall be set forth in or
26 accompanied by a judgment entry. Such order shall operate as a complete
27 release of such fines or costs.

28 Sec. 7. Section 60-4,100, Revised Statutes Cumulative Supplement,
29 2016, is amended to read:

30 60-4,100 ~~(1) The director shall suspend the operator's license of~~
31 ~~any resident of this state:~~

1 (1) Any resident of this state who ~~(a) who~~ has violated a promise to
2 comply with the terms of a traffic citation issued by a law enforcement
3 officer for a moving violation in any jurisdiction outside this state
4 pursuant to the Nonresident Violator Compact of 1977 or in any
5 jurisdiction inside this state shall be subject to having his or her
6 operator's license revoked pursuant to this section. until satisfactory
7 evidence of compliance with the terms of the citation has been furnished
8 to the director; or

9 ~~(b) who has violated a promise to comply with the terms of a traffic~~
10 ~~citation issued by a law enforcement officer for a moving violation in~~
11 ~~any jurisdiction inside this state until satisfactory evidence of~~
12 ~~compliance with the terms of the citation has been furnished to the~~
13 ~~director.~~

14 (2) The court having jurisdiction over the offense for which the
15 citation has been issued shall notify the director of a resident's
16 violation of a promise to comply with the terms of the citation ~~only~~
17 after thirty ~~twenty~~ working days have elapsed from the date of the
18 failure to comply, unless within such thirty working days the resident
19 appears before the clerk of the county court having jurisdiction over the
20 offense to request a hearing pursuant to subsection (3) of this section
21 to establish that such resident lacks the financial ability to pay the
22 citation.

23 (3) A hearing requested under subsection (2) of this section shall
24 be set before the court or magistrate on the first regularly scheduled
25 court date following the request. At the hearing, the resident shall have
26 the right to testify and present evidence as to his or her income,
27 assets, debts, or other matters affecting his or her financial ability to
28 pay the citation. Following the hearing, the court or magistrate shall
29 determine the resident's financial ability to pay the citation, including
30 his or her financial ability to pay in installments.

31 (4)(a) Except as provided in subdivision (4)(c) of this section, if

1 the court or magistrate determines under subsection (3) of this section
2 that the resident is financially able to pay the citation and the
3 resident refuses to pay, the court or magistrate shall either:

4 (i) Notify the director of the resident's violation of a promise to
5 comply with the terms of the citation; or

6 (ii) Postpone the hearing for a period of no more than one month
7 during which period the court or magistrate may order the resident to
8 complete such hours of community service as the court or magistrate deems
9 appropriate, subject to a total limit of twenty hours. At the end of such
10 period, if the resident has completed such community service to the
11 satisfaction of the court or magistrate, the court or magistrate shall
12 enter an order pursuant to subsection (5) of this section discharging the
13 resident of the obligation to pay such citation. If the resident has not
14 completed such community service to the satisfaction of the court or
15 magistrate, the court or magistrate shall notify the director of the
16 resident's violation of a promise to comply with the terms of the
17 citation. A hearing may only be postponed once under this subdivision.

18 (b) If the court or magistrate determines under subsection (3) of
19 this section that the resident is financially unable to pay the citation,
20 the court or magistrate shall either:

21 (i) Enter an order pursuant to subsection (5) of this section
22 discharging the resident of the obligation to pay such citation;

23 (ii) Postpone the hearing for a period of no more than one month
24 during which period the court or magistrate may order the resident to
25 complete such hours of community service as the court or magistrate deems
26 appropriate, subject to a total limit of twenty hours. At the end of such
27 period, if the resident has completed such community service to the
28 satisfaction of the court or magistrate, the court or magistrate shall
29 enter an order pursuant to subsection (5) of this section discharging the
30 resident of the obligation to pay such citation. If the resident has not
31 completed such community service to the satisfaction of the court or

1 magistrate, the court or magistrate shall notify the director of the
2 resident's violation of a promise to comply with the terms of the
3 citation. A hearing may only be postponed once under this subdivision.

4 (c) If the court or magistrate determines under subsection (3) of
5 this section that the resident is financially able to pay in installments
6 and the resident agrees to make such payments, the court or magistrate
7 shall make arrangements suitable to the court or magistrate and to the
8 resident by which the resident may pay in installments. The court or
9 magistrate shall enter an order specifying the terms of such arrangements
10 and the dates on which payments are to be made. If the resident fails to
11 pay an installment, the court or magistrate shall notify the director of
12 the resident's violation of a promise to comply with the terms of the
13 citation unless the resident requests a hearing from the clerk of the
14 county court on or before ten working days after such installment was
15 due. At the hearing, the resident shall show good cause for such failure,
16 including financial inability to pay. If, following such hearing, the
17 court or magistrate finds:

18 (i) That the resident has not demonstrated good cause for such
19 failure, the court or magistrate shall either notify the director of the
20 resident's violation of a promise to comply with the terms of the
21 citation or postpone the hearing and order community service pursuant to
22 subdivision (4)(a)(ii) of this section;

23 (ii) That the resident remains financially able to pay but has
24 demonstrated good cause for such missed installment, the court or
25 magistrate shall make any necessary modifications to the order specifying
26 the terms of the installment payments; or

27 (iii) That the resident has become financially unable to pay, the
28 court or magistrate shall enter an order discharging the resident of the
29 obligation to pay such citation pursuant to subsection (5) of this
30 section.

31 (5) An order discharging the resident of the obligation to pay a

1 traffic citation shall be supported by written findings of fact that set
2 forth the resident's income, assets, and debts and the court's or
3 magistrate's findings as to the resident's financial ability to pay. The
4 order shall be set forth in or accompanied by a judgment entry. Such
5 order shall operate as a complete release of such payment obligation.

6 (6) ~~(3)~~ Upon notice to the director that a resident has violated a
7 promise to comply with the terms of a traffic citation as provided in
8 this section, the director shall send ~~not suspend such resident's license~~
9 ~~until he or she has sent~~ written notice to such resident by regular
10 United States mail to the resident's ~~person's~~ last-known mailing address
11 or, if such address is unknown, to the last-known residence address of
12 such resident ~~person~~ as shown by the records of the department ~~Department~~
13 ~~of Motor Vehicles~~. Such notice shall state that such resident has twenty
14 working days after the postmark date of the notice to
15 show the director that the resident has complied with the terms of such
16 traffic citation

17 ~~No suspension shall be entered by the director if the resident complies~~
18 ~~with the terms of a citation during such twenty working days.~~

19 If the resident fails to show the director that he or she has complied
20 with the terms of such traffic citation ~~comply~~ on or before twenty
21 working days after the postmark date of the notice, the director shall
22 summarily suspend the operator's license and issue an order. The order
23 shall be sent by regular United States mail to the resident's ~~person's~~
24 last-known mailing address as shown by the records of the department. The
25 suspension shall continue until the resident has furnished the director
26 with satisfactory evidence of compliance with the terms of the citation.

27 (7) ~~(4)~~ The reinstatement fee required under section 60-4,100.01
28 shall be waived if five years have passed since issuance of the license
29 suspension order under this section.

30 (8) For purposes of this section:

31 (a) Agency shall mean any public or governmental unit, institution,

1 division, or agency or any private nonprofit organization which provides
2 services intended to enhance the social welfare or general well-being of
3 the community, which agrees to accept community service from residents
4 under this section and to supervise and report the progress of such
5 community service to the court or magistrate; and

6 (b) Community service shall mean uncompensated labor for an agency
7 to be performed by a resident when the resident is not working or
8 attending school.

9 Sec. 8. Section 60-692, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 60-692 When any person fails within thirty working ~~ten~~ days to
12 satisfy any judgment imposed for any traffic infraction, it shall be the
13 duty of the clerk of the court in which such judgment is rendered within
14 this state to transmit a copy of such judgment to the Department of Motor
15 Vehicles as provided in section 60-4,100 , ~~immediately after the~~
16 ~~expiration of such ten-day period, a copy of such judgment.~~

17 Sec. 9. Original sections 29-2206, 29-2206.01, 29-2279, 29-2404,
18 29-2412, and 60-692, Reissue Revised Statutes of Nebraska, and section
19 60-4,100, Revised Statutes Cumulative Supplement, 2016, are repealed.