

LEGISLATIVE BILL 604

Approved by the Governor May 25, 1983

Introduced by Speaker, Nichol, 48, at Request of Governor

AN ACT relating to governmental programs; to amend sections 84-1321 and 84-1332, Reissue Revised Statutes of Nebraska, 1943, and sections 68-104, 68-115, 68-130, 68-313.01, 68-717, 68-1022, and 84-1317, Revised Statutes Supplement, 1982, Laws 1982, LB 522, section 46, and Laws 1982, LB 602, sections 6 and 7; to provide for a county program for general assistance as prescribed; to provide powers and duties; to provide for a hearing procedure; to harmonize provisions; to change provisions relating to medical and public assistance as prescribed; to change provisions relating to state employees' retirement system benefits and participation of certain employees in such system; to change an operative date; to provide operative dates; to repeal the original sections, and also sections 68-103, 68-105, 68-109, and 68-110, Revised Statutes Supplement, 1982, and Laws 1982, Legislative Bill 522, sections 20, 24, 25, and 26; and to declare an emergency.

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

Section 1. When any poor person shall not have a spouse, parent, or stepparent supporting him or her, then the poor person shall receive such relief, referred to as general assistance for purposes of sections 1 to 18 of this act, out of the treasury of the county in which he or she has legal settlement at the time of applying for assistance, in the manner provided in sections 1 to 18 of this act.

Sec. 2. The county board of each county shall be the overseer of the poor and is vested with the superintendence of the poor in such county. It shall be the duty of the county board to provide general assistance to all poor persons who meet the requirements contained in section 1 of this act and who are eligible for general assistance pursuant to standards established

by the county board as required by section 3 of this act. Such general assistance shall be in amounts established by the county board as required by section 3 of this act and shall be adequate to insure maintenance of minimum health and decency.

Sec. 3. Each county shall, not later than July 1, 1984, adopt written standards of eligibility and assistance for general assistance to poor persons. Such standards shall:

(1) Provide that all individuals desiring to make application for general assistance shall have opportunity to do so and that general assistance shall be furnished to all eligible individuals;

(a) Within seven days after the submission of the application if the need is short term; and

(b) Within thirty days after the submission of the application if the need is continuous;

(2) Provide a schedule of goods and services necessary for the maintenance of minimum decency and health for families of various sizes, including single persons. Such schedule shall include, but not be limited to, food, housing, utilities, clothing, medical expenses, burial expenses, laundry, transportation, housing supplies, personal care, and such other goods and services as the county board shall deem necessary to insure the maintenance of minimum health and decency;

(3) Provide a schedule setting forth the amount of money needed to obtain those goods and services referred to in subdivision (2) of this section;

(4) Provide a schedule setting forth the amount of money to be paid to families and individuals who are in need of those goods and services when:

(a) That need is continuous; and

(b) That need is short term;

(5) Provide a schedule of the income and assets which shall be considered as being available to a family or individual and which shall guarantee that only such income and assets as are in the immediate possession and control of the family or person shall be considered as available;

(6) Include a definition of poor persons which will insure that all families and individuals whose available income and assets, as set forth pursuant to subdivision (5) of this section, are less than those determined to be necessary pursuant to subdivisions (2) and (3) of this section will be eligible to receive general assistance; and

(7) Designate whether the county board or a class of employees in the county shall hold and conduct the hearings of aggrieved persons as required by sections 9 to 11 of this act.

Sec. 4. The standards established pursuant to section 3 of this act and all amendments to such

standards shall be reviewed by the county on a biennial basis to insure that such standards reflect changes in living standards and costs-of-living. A copy of all standards and amendments to such standards shall be filed with the Department of Public Welfare within thirty days after their adoption by the county. Upon request of a county board, the Department of Public Welfare shall assist the board in developing standards or amendments. Each county shall make a copy of its standards and amendments available for public inspection during normal business hours.

Sec. 5. No county shall adopt standards or amendments to such standards pursuant to section 3 or 4 of this act without first holding a public hearing to permit discussion and the presentation of testimony or evidence by interested persons. Notice of such hearing shall be published not more than twenty days nor less than ten days prior to the hearing in a newspaper in general circulation throughout the county.

Sec. 6. A county board's failure to adopt standards or to review standards as required by sections 1 to 18 of this act may be reviewed by the district court of the county in an action in mandamus.

Sec. 7. No county shall require a person to make repayment or any other form of compensation for general assistance provided to such person pursuant to sections 1 to 18 of this act if such general assistance was not obtained through misrepresentation or fraud.

Sec. 8. Any person whose application for general assistance, made pursuant to sections 1 to 18 of this act, is denied or whose continuing general assistance payment is terminated or reduced shall, at the time of the denial, termination, or reduction, be given a written notice of the specific reasons for such denial, termination, or reduction. Such notice shall also inform the person of the right to a hearing to review the denial, termination, or reduction and the procedures for requesting such hearing.

Sec. 9. Any person whose claim for general assistance (1) has not been acted upon within the time established by section 3 of this act, (2) has been denied, (3) has not been granted in full, or (4) has been reduced or terminated may request a hearing on such action or inaction before the county board or, if the county board so delegates as allowed by section 3 of this act, before an employee of the county.

Sec. 10. A person requesting a hearing pursuant to section 9 of this act shall have the following rights:

(1) To examine the county general assistance file pertaining to his or her case prior to and during the hearing;

(2) To be represented in the proceedings by a

lawyer, friend, relative, or anyone else he or she may select;

(3) To present evidence; and

(4) To confront and cross-examine witnesses.

Sec. 11. The county board or hearing examiner, as the case may be, shall use the following procedure for all hearings:

(1) Tape-record the hearing;

(2) Make a decision within thirty days following the hearing;

(3) Make the decision based upon the evidence adduced and the law;

(4) Provide the claimant a written copy of the decision setting forth findings and conclusions; and

(5) Preserve the tape of the hearing and all exhibits offered at the hearing for not less than sixty days following entry of the hearing decision.

Sec. 12. (1) Any person aggrieved by a decision rendered pursuant to sections 9 to 11 of this act may obtain a review of such decision in the district court of the county.

(2) Proceedings for review shall be instituted by filing a petition in the district court of the county where the decision was rendered within thirty days after service of the decision on the claimant. The county shall be made a party to the proceedings for review and summons shall be served as in other actions against a county. The court may permit other interested parties to intervene.

(3) Within fifteen days after service of summons upon the county or within such further time as the court for good cause shown may allow, the county shall prepare and transmit to the court a certified transcript of the proceedings had before it, which transcript shall include the county's standards and all amendments regarding eligibility and assistance for general assistance, the transcribed hearing record, all exhibits offered at the hearing, and the final decision sought to be reversed, vacated, or modified.

(4) The review shall be conducted by the court without a jury on the record of the county.

(5) The court may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if any substantial rights of the petitioner may have been prejudiced because the decision is:

(a) In violation of constitutional provisions;

(b) In excess of the statutory authority or jurisdiction of the county;

(c) Made upon unlawful procedure;

(d) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or

(e) Arbitrary, capricious, an abuse of

discretion, or otherwise not in accordance with the law.

Sec. 13. Any person becoming chargeable as a poor person in this state shall be chargeable as such in the county in which he or she has established a legal settlement as defined in section 20 of this act.

Sec. 14. If any person shall become chargeable in any county in which he or she has not established a legal settlement at the time of applying for aid, he or she shall be duly taken care of by the proper authority of the county where he or she may be found. It shall be the duty of the clerk of the county board to send a notice by mail to the clerk of the county board of the county in which such poor person has a legal settlement that such person has become chargeable as a poor person, and requesting the authorities of such county to promptly remove such poor person and to pay the expense accrued in taking care of him or her.

Sec. 15. If a poor person, by reason of sickness or disease, or by neglect of the authorities of the county in which he or she has a legal settlement, or for any other sufficient cause, cannot be removed, then the county taking charge of such individual may sue for, and recover from the county to which such individual belongs, the amount expended for and in behalf of such poor person and in taking care of such person.

Sec. 16. Whenever any poor person without a legal settlement in this state shall become sick in any county in this state, not having income and assets available to pay for medical services, or whenever any poor person without a legal settlement in this state is found in distress in any county in this state and is without income and assets to preclude suffering, it shall be the duty of the county board to furnish such temporary assistance to such person as it shall deem necessary. If any such person shall die, the county board shall provide all necessary means for a decent burial of such person. If such poor person has a legal settlement in another state, the county board may furnish such person, in addition to temporary assistance, transportation and the requisite expenses incurred thereby and may return such poor person to the state in which he or she has legal settlement. The representation by a poor person of a legal settlement shall be verified by the county board and assurance shall be given the board that such poor person will be received and given care in the place of his or her legal settlement. If any poor person without a legal settlement in this state shall apply for general assistance in any county in which he or she is situated, the county board may proceed at its discretion to provide for such poor person in the same manner as it would provide for a poor person with legal settlement in

the county.

Sec. 17. Even though a poor person may be eligible for general assistance, the county board shall have no liability to such person until the county board or the person to whom it has delegated responsibility for administration of general assistance shall have passed upon a written application for assistance or shall have failed to act upon the written application within the appropriate time prescribed in section 3 of this act. If a poor person is incapable, for any cause, of completing a written application for assistance, it may be completed by another acting in the interest of such poor person.

Sec. 18. No general assistance shall be alienable by assignment or transfer, or be subject to attachment, garnishment, or any other legal process, except that a county may pay general assistance directly to any person, corporation, or other legal entity providing goods or services, as described in section 3 of this act, to the poor person.

Sec. 19. That section 68-104, Revised Statutes Supplement, 1982, be amended to read as follows:

68-104. The Department of Public Welfare shall be the overseer of the poor and shall be vested with the entire and exclusive superintendence of the poor in this state, except that subject to the limitations of section 68-1022 the county board of each county shall furnish such medical service as may be required for the poor of the county who are not eligible for other medical assistance programs and general assistance for the poor of the county. In providing medical and hospital care for the poor, the county board shall make use of any existing facilities, including tax supported tax-supported hospitals and charitable clinics so far as the same may be available and shall use the financial eligibility criteria established for the standard of need developed by the Department of Public Welfare pursuant to section 68-126.

Sec. 20. That section 68-115, Revised Statutes Supplement, 1982, be amended to read as follows:

68-115. The Department of Public Welfare shall establish the residency or legal settlement requirements for eligibility for public assistance from the state and eligibility for medical services furnished by the county pursuant to section 68-104. The department shall not require a person to reside in a county or this state for more than one year to establish residency or legal settlement in the county or state respectively. Residency (1) The term legal settlement for all public assistance programs shall be taken and considered to mean as follows:

Every person, except those hereinafter mentioned, who has resided one year continuously in any county, shall be deemed to have a legal settlement in such county.

Every person who has resided one year continuously within the state, but not in any one county shall have a legal settlement in the county in which he or she has resided six months continuously.

(2) The time during which a person has been an inmate of any public or private charitable or penal institution, or has received care at public expense in any type of care home, nursing home, or board and room facility licensed as such and caring for more than one patient or guest, and each month during which he or she has received relief from private charity or the poor fund of any county shall be excluded in determining the time of residence hereunder, as referred to in subsection (1) of this section.

(3) Every minor who is not emancipated and settled in his or her own right shall have the same legal settlement as the parent with whom he or she has resided.

(4) A legal settlement in this state shall be terminated and lost by (a) acquiring a new one in another state or by (b) voluntary and uninterrupted absence from this state for the period of one year with intent to abandon residence in Nebraska.

Sec. 21. That section 68-130, Revised Statutes Supplement, 1982, be amended to read as follows:

68-130. Counties shall maintain, at no additional cost to the Department of Public Welfare, office and service facilities used for the administration of the public assistance programs as such facilities existed on April 1, 1982 1983.

Sec. 22. That section 68-313.01, Revised Statutes Supplement, 1982, be amended to read as follows:

68-313.01. Members of the Nebraska Legislature and all state and county officials of this state shall have free access at all times to all records and information in connection with the aid and assistance referred to in section 68-313. The public shall have free access to all information concerning lists of names and amounts of payments which appear on any financial records, except that no lists shall be used for commercial or political purposes.

Sec. 23. That section 68-717, Revised Statutes Supplement, 1982, be amended to read as follows:

68-717. The Department of Public Welfare shall assume the sole responsibility for all public assistance, delegated to county boards and administered

by the county boards or divisions of public welfare, including, but not limited to, aid to families with dependent children, emergency assistance, general assistance or direct county relief, medical assistance, assistance to the aged, blind, or disabled, crippled children's services, commodities, and food stamps. On and after July 1, 1986, the department shall also assume the sole responsibility for medical assistance.

Sec. 24. That section 68-1022, Revised Statutes Supplement, 1982, be amended to read as follows:

68-1022. Except for care in a state institution and care on behalf of persons who have a right of residence on any reservation under the jurisdiction of the government of the United States, the cost of medical assistance paid by the county in which the recipient may have a legal settlement shall be eighteen per cent commencing July 1, 1979. Commencing July 1, 1980, the county shall pay sixteen per cent of the cost of such medical assistance. Commencing July 1, 1981, the county shall pay fourteen per cent of the cost of such medical assistance. Commencing July 1, 1984, the county shall pay nine and thirty-three hundredths per cent of the cost of such medical assistance. Commencing July 1, 1985, the county shall pay four and sixty-seven hundredths per cent of the cost of such medical assistance. Commencing July 1, 1983 1986, and thereafter, medical assistance shall be paid from state funds and such funds as may be allocated by the government of the United States.

Sec. 25. That section 84-1317, Revised Statutes Supplement, 1982, be amended to read as follows:

84-1317. An employee may elect to retire on the attainment of age sixty-five or on the attainment of age sixty after five thirty years of service. With the approval of the department concerned and the employee, an employee may retire on the attainment of age sixty regardless of the number of years of service. An employee may retire as a result of disability at any age.

Any employee shall be required to retire at the end of the month in which his or her seventieth birthday occurs, except that with the annual approval of the department concerned and the employee, such employee may continue his or her employment beyond the attainment of age seventy, except that members of commissions and boards who serve periodically and only receive authorized per diems or expenses shall not be required to retire at age seventy.

The first of the month immediately following the last day of work shall be the retirement date, except that disability retirement benefits shall be paid

from the date of disability as determined by the board. The provisions pertaining to mandatory retirement shall not apply to elected officials. First payments pertaining to retirements under prior service provisions of sections 84-1301 to 84-1331 shall be made at such time as the retirement board may determine.

Sec. 26. That section 84-1321, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1321. (1) Any member of the retirement system who ceases to be an employee before becoming eligible for retirement under the provisions of section 84-1317 may, upon application, receive from the primary carrier (a) a termination benefit equal to the amount in his or her employee account payable in a lump sum plus a paid-up deferred annuity provided by the vested portion of the employer account under which the first annuity payment shall be made as of the first of the month immediately following the sixty-fifth birthday or (b) a paid-up deferred annuity provided by the employee account and the vested portion of the employer account under which the first annuity payment shall be made as of the first of the month immediately following the sixty-fifth birthday. If the terminating member does not make application he or she shall receive the benefits provided under subdivision (1)(b) of this section, except that any person who has been a member of the retirement system and has terminated his or her employment prior to the effective date of this act and has not withdrawn the amount in his or her employee account shall have the option upon application prior to January 1, 1984, to receive the benefit provided in subdivision (1)(a) of this section. to withdraw the amount in his employee account; he shall be granted; in lieu thereof; a paid-up deferred annuity under which the first annuity payment shall be made as of the first of the month immediately following the sixty-fifth birthday.

(2) At the option of the terminating member, any paid-up deferred annuity provided under subsection (1) of this section such annuity may commence as of the first of the month at any time after such member attains the age of sixty and before his or her sixty-fifth birthday. Such election by the terminating member may be made at any time prior to the commencement of the annuity payments. Such paid-up deferred annuity shall be the actuarial equivalent, as determined by the group annuity contract, of the employee account together with the vested a certain percentage of the employer account. If the terminating member has been a member of the system for less than five years, such percentage shall be nil; if the terminating member has been a member of the system for at least five years, such percentage

shall be twice the number of complete months; not counting the first sixty; that the terminating member has been a member of the system; Provided; that in no event shall such percentage exceed one hundred; and provided further; that such percentage shall equal one hundred for any disability retirement under the provisions of section 84-1317.

(3) The vesting percentage shall be one hundred after five years of participation in the retirement plan. The vesting percentage shall equal one hundred for any disability retirement under the provisions of section 84-1317.

(4) In the event that the terminating member shall not be credited with one hundred per cent of his or her employer account, the remainder shall be credited to the State Employees Retirement Fund and shall be applied to reduction of the liability for prior service benefits until such time as such liability is completely funded, and thereafter the remainder shall first be used to meet the expense charges incurred by the Public Employees Retirement Board in connection with administering the system and the remainder shall then be used to reduce the state contribution which would otherwise be required to fund future service retirement benefits.

Sec. 27. That section 84-1332, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1332. (1) Any county employee who is a member under a county employees retirement system, including retirement systems authorized by section 23-1118, and whose status as a county employee is changed by the Legislature to that of a state employee shall, upon application to the Public Employees Retirement Board and to the county, or to the county board of a county having a retirement system authorized by section 23-1118, obtain full and immediate vesting in any prior service retirement benefits and any future service retirement benefits which have been accrued to the date of transfer, except that the employee may not withdraw the amount in his or her employee account prior to his or her retirement and still receive such vested benefits. Any such employee shall be eligible for immediate participation in the State Employees Retirement System with no minimum period of service required if the minimum age requirement of the State Employees Retirement System is satisfied. Each employee's service as a county employee, after he or she has attained the minimum age required under the State Employees Retirement System and has completed two years of service, shall be credited as though it were participation in the State Employees Retirement System for purposes of calculating the termination benefits

established by section 84-1321.

(2) Any county employee whose status as a county employee is or has been changed by the Legislature to that of a state employee shall be eligible for immediate participation in the State Employees Retirement System with no minimum period of service required if the minimum age requirement of the State Employees Retirement System is satisfied, or if the minimum age requirement is not satisfied on the date of transfer, the employee shall be eligible to participate at the date he or she satisfies the minimum age requirement.

Sec. 28. That Laws 1982, Legislative Bill 602, Eighty-seventh Legislature, Second Session, section 6, be amended to read as follows:

Sec. 6. Sections 3 and 5 of this act shall become operative on July 1, 1983, and the remaining sections of this act shall become operative on July 1, 1984.

Sec. 29. That Laws 1982, Legislative Bill 602, Eighty-seventh Legislature, Second Session, section 7, be amended to read as follows:

Sec. 7. That original sections 68-104, 68-114, ~~68-145~~ and 68-126, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 30. That Laws 1982, LB 522, section 46, be amended to read as follows:

Sec. 46. That original sections 28-710, 28-711, 28-713, 28-723 to 28-727, 43-501, 43-511, 43-512.03, 43-514, 43-515, 43-525, 43-529, 68-103, to 68-105, 68-109, 68-110, ~~68-145~~, ~~68-126~~, ~~68-128~~, 68-214, 68-309, 68-312, 68-313, 68-313.01, 68-716, 68-1101, 68-1107, 68-1014 to 68-1016, 68-1023, and 68-1206, Reissue Revised Statutes of Nebraska, 1943, sections 19-2702, 19-2716, 43-512, 68-703, and 68-1108, Revised Statutes Supplement, 1980, and section 68-1022, Revised Statutes Supplement, 1981, and also section 43-505, 43-506, 43-527, 43-528, 43-530, 68-106 to ~~68-109~~ ~~68-108~~, 68-111 to 68-114, 68-116, 68-218, 68-310.01, 68-310.02, 68-329, 68-704 to 68-709, 68-711, 68-1109, and 68-1010, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 31. Sections 19 and 33 of this act shall become operative on July 1, 1984, and the remaining sections of this act shall become operative on July 1, 1983.

Sec. 32. That original sections 84-1321 and 84-1332, Reissue Revised Statutes of Nebraska, 1943, and sections 68-115, 68-130, 68-313.01, 68-717, 68-1022, and 84-1317, Revised Statutes Supplement, 1982, Laws 1982, LB 522, section 46, and Laws 1982, LB 602, sections 6 and 7, and also sections 68-103, 68-105, 68-109, and 68-110, Revised Statutes Supplement, 1982, and Laws

1982, LB 522, sections 20, 24, 25, and 26, are repealed.
Sec. 33. That original section 68-104,

Revised Statutes Supplement, 1982, is repealed.

Sec. 34. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.