

LEGISLATIVE BILL 360

Approved by the Governor April 17, 1992

Introduced by Business and Labor Committee:
Coordsen, 32, Chairperson; Chambers, 11;
Elmer, 38; Hefner, 19; Morrissey, 1;
Schellpeper, 18

AN ACT relating to courts; to amend sections 8-1736, 13-512, 48-120, 48-155, 48-156, 48-163, 48-169, 48-170, 48-178, 48-179, 48-180, and 55-444, Reissue Revised Statutes of Nebraska, 1943, section 48-1,110, Revised Statutes Supplement, 1990, sections 24-1104, 25-1140, 25-1315.03, 25-21,167, 29-116, 29-2315.01, 29-2316, 42-351, 43-2,126, 46-210, 48-125, 48-182, 48-185, 48-808, 48-812, 55-445, 70-1326, 75-136, 75-137, 75-138, 77-1609, 77-1610, 81-1387, 83-1224, and 85-1418, Revised Statutes Supplement, 1991, and section 77-1510, Revised Statutes Supplement, 1991, as amended by section 128, Legislative Bill 1063, Ninety-second Legislature, Second Session, 1992; to change provisions relating to appeals to the Court of Appeals and Supreme Court; to harmonize provisions with the creation of the Court of Appeals; to change provisions relating to schedules of fees; to eliminate rehearings; to provide for attorney's fees and expedited hearings; to provide for court reporters, review procedures, and the correction of patent or obvious errors; to provide for the applicability of provisions; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 8-1736, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1736. (1) Any person aggrieved by a final order of the director may obtain a review of the order in the district court of Lancaster County by filing, within sixty days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition for review shall be served upon the director.

(2) Upon the filing of a petition for review, except when the taking of additional evidence is ordered by the court pursuant to subsection (5) or (6) of this section, the court shall have exclusive jurisdiction of the matter, and the director may not modify or set aside the order in whole or in part.

(3) The filing of a petition for review under subsection (1) of this section shall not, unless specifically ordered by the court, operate as a stay of the director's order, and the director may enforce or ask the court to enforce the order pending the outcome of the review proceedings.

(4) Upon receipt of the petition for review, the director shall certify and file in the court a copy of the order and the transcript or record of the evidence upon which it was based. If the order became final by operation of law under subsection (4) of section 8-1735, the director shall certify and file in court the summary order, evidence of its service upon the parties to it, and an affidavit certifying that no hearing has been held and the order became final pursuant to such section.

(5) If either the aggrieved party or the director applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the director or other good cause, the court may order the additional evidence to be taken by the director under such conditions as the court considers proper.

(6) If new evidence is ordered taken by the court, the director may modify the findings and order by reason of the additional evidence and shall file in the court the additional evidence together with any modified or new findings or order.

(7) The court shall review de novo the petition based upon the original record before the director as amended under subsections (5) and (6) of this section. The findings of the director as to the facts, if supported by competent, material, and substantive evidence, shall be conclusive. Based upon such review, the court may affirm, modify, enforce, or set aside the order, in whole or in part.

(8) The judgment of the court shall be subject to review by may be appealed to the Court of Appeals, or the Supreme Court pursuant to subsection (2) or (3) of section 24-1106 or section 24-1107.

Sec. 2. That section 13-512, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

13-512. A taxpayer upon whom a tax will be imposed as a result of the action of a governing body in adopting a budget statement may contest the validity of the budget statement adopted by the governing body by filing an action in the district court of the county in which the governing body is situated. Such action shall be based either upon a violation of or a failure to comply with the provisions and requirements of the Nebraska Budget Act by the governing body. In response to such action, the governing body shall be required to show cause why the budget statement should not be ordered set aside, modified, or changed. The action shall be tried to the court without a jury and shall be given priority by the district court over other pending civil litigation, and by the Court of Appeals or the Supreme Court appellate court on appeal, to the extent possible and feasible to expedite a decision. Such action shall be filed within thirty days after the adopted budget statement is required to be filed by the governing body with the levying board. If the district court finds that the governing body has violated or failed to comply with the requirements of the act, the court shall, in whole or in part, set aside, modify, or change the adopted budget statement or tax levy as the justice of the case may require. The district court's decision may be appealed to the Court of Appeals.

The remedy provided in this section shall not be exclusive but shall be in addition to any other remedy provided by law.

Sec. 3. That section 24-1104, Revised Statutes Supplement, 1991, be amended to read as follows:

24-1104. (1) Decisions of the Court of Appeals shall be in the form of an order which may be accompanied by a memorandum opinion. The memorandum opinion shall not be published unless publication is ordered by the Supreme Court. All memorandum opinions shall be filed with the Clerk of the Supreme Court, shall be public records, and shall be made available to the public in such manner as may be determined by the Supreme Court.

(2) In determining whether to publish a memorandum opinion of the Court of Appeals, in the Supreme Court Reports, the Supreme Court may take into consideration one or more of the following factors:

(a) Whether the decision enunciates a new rule of law or modifies, clarifies, or criticizes an existing rule of law;

(b) Whether the decision applies an established rule of law to a factual situation significantly different from that in published opinions;

(c) Whether the decision resolves or identifies a conflict between prior decisions;

(d) Whether the decision will contribute to legal literature by collecting case law or reciting legislative history; and

(e) Whether the decision involves a case of substantial and continuing public interest.

Sec. 4. That section 25-1140, Revised Statutes Supplement, 1991, be amended to read as follows:

25-1140. Upon appeal from the district court, ~~to the Court of Appeals or Supreme Court,~~ the party appealing may order a bill of exceptions by filing in the office of the clerk of the district court a praecipe therefor within the time allowed for filing a notice of appeal. The procedure for preparation, settlement, signature, allowance, certification, filing, and amendment of the bill of exceptions shall be regulated and governed by rules of practice prescribed by the Supreme Court.

Sec. 5. That section 25-1315.03, Revised Statutes Supplement, 1991, be amended to read as follows:

25-1315.03. An order entering judgment as provided in section 25-1315.02 or granting or denying a new trial is an appealable order. The time for and manner of taking such appeal shall be as in an appeal from a judgment, decree, or final order of the district court in a civil action. ~~The Court of Appeals or Supreme Court on~~ On appeal from an order granting a new trial, upon a review of an order denying a new trial in the action in which such motion was made, or on appeal from the judgment, the appellate court may order and direct judgment to be entered in favor of the party who was entitled to such judgment.

Sec. 6. That section 25-21,167, Revised Statutes Supplement, 1991, be amended to read as follows:

25-21,167. The district court of Lancaster County shall speedily determine the action, and an appeal may be taken to the Court of Appeals ~~or the Supreme Court pursuant to subsection (2) or (3) of section 24-1106~~ within thirty days thereafter. Trial in the appellate court shall in all ways be expedited, set for an early hearing, and advanced as other causes which involve the public welfare and convenience are advanced.

Sec. 7. That section 29-116, Revised Statutes Supplement, 1991, be amended to read as follows:

29-116. In addition to any other rights of appeal, the state shall have the right to appeal from an order granting a motion for the suppression of statements alleged to be involuntary or in violation of the fifth or sixth amendments of the Constitution of the United States in the manner provided in this section. When such motion has been granted in the district court, the Attorney General or the county attorney or prosecuting officer with the consent of the Attorney General may file his or her application with the Clerk of the Supreme Court asking for a summary review of the order granting the motion. The review shall be made by a judge of the Court of Appeals at chambers upon such notice, briefs, and argument as the judge directs, after which such judge shall enter his or her order affirming, reversing, or modifying the order submitted for review, and upon any trial on the general issue thereafter, the parties and the trial court shall be bound by such order. Upon conviction after trial the defendant may on appeal to the Court of Appeals challenge the correctness of the order by the judge.

Sec. 8. That section 29-2315.01, Revised Statutes Supplement, 1991, be amended to read as follows:

29-2315.01. The county attorney may take exception to any ruling or decision of the court made during the prosecution of a cause by presenting to the trial court the application for leave to docket an appeal to the Court of Appeals or the Supreme Court with reference to the rulings or decisions of which complaint is made. Such application shall contain a copy of the ruling or decision complained of, the basis and reasons for objection thereto, and a statement by the county attorney as to the part of the record he or she proposes to present to the appellate court. Such application shall be presented to the trial court within twenty days after the final order is entered in the cause, and upon presentation, if the trial court finds it is in conformity with the truth, the judge of the trial court shall sign the same and shall further indicate thereon whether in his or her opinion the part of the record which the county attorney proposes to present to the appellate court is adequate for a proper consideration of the matter. The county attorney shall then present such application to the appellate court within thirty days from the date of the final order. If the application is granted, the county attorney shall within

thirty days from such granting order a bill of exceptions in accordance with section 29-2020 if such bill of exceptions is desired and otherwise proceed to obtain a review of the case as provided in section 25-1912.

Sec. 9. That section 29-2316, Revised Statutes Supplement, 1991, be amended to read as follows:

29-2316. The judgment of the court in any action taken pursuant to section 29-2315.01 shall not be reversed nor in any manner affected when the defendant in the trial court has been placed legally in jeopardy, but in such cases the decision of the ~~Court of Appeals or the Supreme Court~~ appellate court shall determine the law to govern in any similar case which may be pending at the time the decision is rendered or which may thereafter arise in the state. When the decision of the ~~Court of Appeals or the Supreme Court~~ appellate court establishes that the final order of the trial court was erroneous and the defendant had not been placed legally in jeopardy prior to the entry of such erroneous order, the trial court may upon application of the county attorney issue its warrant for the rearrest of the defendant and the cause against him or her shall thereupon proceed in accordance with the law as determined by the decision of the ~~Court of Appeals or the Supreme Court~~ pursuant to subsection {2} or {3} of section 24-1106 or section 24-1107 appellate court.

Sec. 10. That section 42-351, Revised Statutes Supplement, 1991, be amended to read as follows:

42-351. (1) In proceedings under sections 42-347 to 42-379, the court shall have jurisdiction to inquire into such matters, make such investigations, and render such judgments and make such orders, both temporary and final, as are appropriate concerning the status of the marriage, the custody and support of minor children, the support of either party, the settlement of the property rights of the parties, and the award of costs and attorney's fees.

(2) When final orders relating to proceedings governed by sections 42-347 to 42-379 are on appeal to the ~~Court of Appeals or Supreme Court~~ and such appeal is pending, the district court that issued such orders shall retain jurisdiction to provide for such orders regarding custody, visitation, or support or other appropriate orders in aid of the appeal process.

Sec. 11. That section 43-2,126, Revised Statutes Supplement, 1991, be amended to read as

follows:

43-2,126. Any final order or judgment entered by a separate juvenile court may be reviewed by the Court of Appeals or the Supreme Court pursuant to subsection (2) or (3) of section 24-1106 or section 24-1107 appealed to the Court of Appeals. The appellate court shall conduct its review within the same time and in the same manner prescribed by law for review of an order or judgment of the district court, except as provided in sections 43-287.01 to 43-287.06 and except that when appeal is taken from a finding by the juvenile court terminating parental rights, the cause shall be advanced for argument before the appellate court and the appellate court shall, in order to expedite the preferred disposition of the case and the juvenile, render the judgment and write an opinion its opinion, if any, as speedily as possible.

Sec. 12. That section 46-210, Revised Statutes Supplement, 1991, be amended to read as follows:

46-210. If any county, party, or parties interested in irrigation or water power work affected thereby are dissatisfied with the decision or with any order adopted, such dissatisfied county, party, or parties may institute proceedings in appeal to the Court of Appeals or the Supreme Court pursuant to subsection (2) or (3) of section 24-1106 or section 24-1107 to reverse, vacate, or modify the order complained of. The procedure to obtain such reversal, modification, or vacation of any such decision or order upon which a hearing has been had before the Department of Water Resources shall be governed by the same provisions in force with reference to appeals and error proceedings from the district court, to the Court of Appeals or Supreme Court. The evidence presented before the department as reported by its official stenographer and reduced to writing, together with a transcript of the record and pleadings upon which the decision is based, duly certified in such case under the seal of the department, shall constitute the complete record and the evidence upon which the case shall be presented to the appellate court. The time for perfecting such appeal shall be limited to thirty days after the rendition of such decision or order, and the appellate court shall advance such appeal to the head of its docket.

Sec. 13. That section 48-120, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-120. The employer shall be liable for all

reasonable medical, surgical, and hospital services, including plastic or reconstructive but not cosmetic surgery when the injury has caused disfigurement, appliances, supplies, prosthetic devices, and medicines as and when needed, which are required by the nature of the injury and which will relieve pain or promote and hasten the employee's restoration to health and employment, and shall include damage to or destruction of artificial members, dental appliances, teeth, hearing aids, and eyeglasses, but, in the case of dental appliances, hearing aids, or eyeglasses, only if such damage or destruction resulted from an accident which also caused personal injury entitling the employee to compensation therefor for disability or treatment, subject to the approval of and regulation by the Nebraska Workers' Compensation Court, not to exceed the regular charge made for such service in similar cases. The compensation court may establish and publish schedules of maximum fees for such services. If the compensation court establishes such a schedule, it shall publish and furnish such schedule to the public. The compensation court shall review such schedule annually at least biennially and adopt appropriate changes when necessary. The compensation court may contract with any person, firm, corporation, organization, or government agency to secure adequate data to establish such fees. The provider or supplier of such services shall not collect or attempt to collect from any employer, insurer, government, or injured employee or dependent or the estate of any injured or deceased employee any amount in excess of the maximum fee established by the compensation court for any such service. The compensation court may shall establish and charge a fee to recover the cost of published fee schedules. The employee shall have the right to make the initial selection of his or her physician from among all licensed physicians in the state and shall have the right to make an alternative choice of physician if he or she is not satisfied with the physician first selected. If the employee shall select a physician located in a community not the home or place of work of the employee and a physician is available in the local community or in a closer community, no travel expenses shall be required to be paid by the employer or his or her insurer. In cases of injury requiring dismemberment or injuries involving major surgical operation, the employee may designate to his or her employer the physician or surgeon to perform the operation. If the injured employee unreasonably refuses or neglects to

avail himself or herself of medical or surgical treatment, except as herein and otherwise provided, the employer shall not be liable for an aggravation of such injury due to such refusal and neglect and the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act.

If, due to the nature of the injury or its occurrence away from the employer's place of business, the employee is unable to make such selection, the selection requirements of this section shall not apply as long as the inability to make a selection persists. The physician selected may arrange for any consultation, referral, or extraordinary or other specialized medical services as the nature of the injury shall require. The employer shall not be responsible for medical services furnished or ordered by any physician or other person selected by the employee in disregard of this section.

No claim for such medical treatment shall be valid and enforceable unless, within fourteen days following the first treatment, the physician giving such treatment furnishes the employer and the Nebraska Workers' Compensation Court a report of such injury and treatment on a form prescribed by the compensation court. The compensation court may excuse the failure to furnish such report within fourteen days when it finds it to be in the interest of justice to do so.

All physicians attending injured employees shall comply with all the rules and regulations adopted and promulgated by the Nebraska Workers' Compensation Court and shall make such reports as may be required by it at any time and at such times as required by it upon the condition or treatment of any injured employee or upon any other matters concerning cases in which they are employed. Generally, all medical and hospital information relevant to the particular injury shall, on demand, be made available to the employer, the employee, the carrier, and the compensation court. The party requesting such medical and hospital information shall pay the cost thereof. No such relevant information developed in connection with treatment or examination for which compensation is sought shall be considered a privileged communication for purposes of a workers' compensation claim. When a physician willfully fails to make any report required of him or her under this section, the compensation court may order the forfeiture of his or her right to all or part of payment due for services rendered in connection with the particular case.

Whenever the Nebraska Workers' Compensation Court deems it necessary, in order to assist it in resolving any issue of medical fact or opinion, it shall cause the employee to be examined by a physician or physicians selected by the compensation court and obtain from such physician or physicians a report upon the condition or matter which is the subject of inquiry. The compensation court may charge the cost of such examination to the carrier. The cost of such examination shall include the payment to the employee of all necessary and reasonable expenses incident to such examination, such as transportation and loss of wages.

The Nebraska Workers' Compensation Court shall have the authority to determine the necessity, character, and sufficiency of any medical services furnished or to be furnished and shall have authority to order a change of doctor, physician, hospital, or rehabilitation facility when it deems such change is desirable or necessary. For the purpose of this section, physician shall mean any person licensed to practice medicine and surgery, osteopathic medicine, chiropractic, podiatry, or dentistry.

The Nebraska Workers' Compensation Court shall order the employer to make payment directly to the supplier of any services provided for in this section or reimbursement to anyone who has made any payment to the supplier for services provided in this section. No such supplier or payor may be made or become a party to any action before the compensation court.

Sec. 14. That section 48-125, Revised Statutes Supplement, 1991, be amended to read as follows:

48-125. (1) Except as hereinafter provided, all amounts of compensation payable under the Nebraska Workers' Compensation Act shall be payable periodically in accordance with the methods of payment of wages of the employee at the time of the injury or death; PROVIDED, fifty percent shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability. Whenever the employer refuses payment of compensation or medical payments subject to section 48-120, or when the employer neglects to pay compensation for thirty days after injury or neglects to pay medical payments subject to such section after thirty days' notice has been given of the obligation for medical payments, and proceedings are held before the Nebraska Workers' Compensation Court, a reasonable attorney's fee shall be allowed the employee by the compensation court in all cases when the employee

receives an award. Attorney's fees allowed shall not be deducted from the amounts ordered to be paid for medical services nor shall attorney's fees be charged to the medical providers. If the employer files an application for review or rehearing before the compensation court from an award of a judge of the compensation court and fails to obtain any reduction in the amount of such award, the compensation court shall allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such rehearing or review, and the Court of Appeals or Supreme Court shall in like manner allow the employee a reasonable sum as attorney's fees for the proceedings in the Court of Appeals or Supreme Court. If the employee files an application for a review or rehearing before the compensation court from an order of a judge of the compensation court denying an award and obtains an award or if the employee files an application for a rehearing or review before the compensation court from an award of a judge of the compensation court when the amount of compensation due is disputed and obtains an increase in the amount of such award, the compensation court may allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such review, rehearing, and the Court of Appeals or Supreme Court may in like manner allow the employee a reasonable sum as attorney's fees for the proceedings in the Court of Appeals or Supreme Court. A reasonable attorney's fee allowed pursuant to this section shall not affect or diminish the amount of the award.

(2) When an attorney's fee is allowed pursuant to this section, there shall further be assessed against the employer an amount of interest on the final award obtained, computed from the date compensation was payable, as provided in section 48-119, at a rate equal to the rate of interest allowed per annum under section 45-104.01, as such rate may from time to time be adjusted by the Legislature. Interest shall apply only to those weekly compensation benefits awarded which have accrued at the time payment is made by the employer. If the employer pays or tenders payment of compensation, the amount of compensation due is disputed, and the award obtained is greater than the amount paid or tendered by the employer, the assessment of interest shall be determined solely upon the difference between the amount awarded and the amount tendered or paid.

Sec. 15. That section 48-155, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-155. The judges of the Nebraska Workers'

Compensation Court shall, on July 1 of every odd-numbered year by a majority vote, select one of their number as presiding judge for the next two years. The presiding judge may designate one of the other judges to act as presiding judge in his or her stead whenever necessary during the disqualification, disability, or absence of the presiding judge. The presiding judge shall preside at all rehearings review hearings held by the compensation court, make all rulings for the compensation court at such rehearings review hearings, rule on all matters submitted to the compensation court except those arising in the course of original hearings before a single judge, assign or direct the assignment of the work of the compensation court to the several judges and employees thereof, preside at such meetings of the judges of the compensation court as may be necessary, and perform such other supervisory duties as the needs of the compensation court may require. During the disqualification, disability, or absence of the presiding judge, the acting presiding judge shall exercise all of the powers of the presiding judge.

Sec. 16. That section 48-156, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-156. A majority of the judges of the Nebraska Workers' Compensation Court shall constitute a quorum to adopt rules and regulations, as provided in sections 48-163 and 48-164, to transact business, except when the statute or a rule adopted by the compensation court permits one judge thereof to act, and three judges shall constitute a quorum for the rehearing review of any disputed claim for compensation. The act or decision of a majority of the judges constituting such quorum shall in all such cases be deemed the act or decision of the compensation court.

Sec. 17. That section 48-163, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-163. The Nebraska Workers' Compensation Court may adopt and promulgate all reasonable rules and regulations necessary for carrying out the intent and purpose of the Nebraska Workers' Compensation Act and shall administer and enforce all of the provisions of such act, except such as are committed to the Supreme Court. The compensation court or any judge thereof may, upon the motion of either party or upon its or his or her own motion, require the production of any books, papers, payrolls, medical reports, X-rays, photographs

or plates, or any facts or matters which may be necessary to assist in a determination of the rights of either party in any matter pending before such compensation court or any judge thereof. The court may expedite the hearing of a disputed case when there is an emergency.

Sec. 18. That section 48-169, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-169. A transcribed copy of the evidence and proceedings, or any specific part thereof, of any investigation taken by a stenographer for the Nebraska Workers' Compensation Court or by a court reporter appointed or furnished as provided in section 48-178, being certified and sworn to by such stenographer or court reporter, to be a true and correct transcript of the testimony, or of a particular witness, or any specific part thereof, or to be a correct copy of the transcript of the proceedings had on such investigation so purporting to be taken and transcribed, may be received in evidence by the compensation court with the same effect as if such stenographer or court reporter were present and testified to the facts certified. A copy of such transcript shall be furnished on demand to any party in interest upon payment of the fee therefor, as provided for transcripts in the district courts of the State of Nebraska.

Sec. 19. That section 48-170, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-170. Every order and award of a single judge of the Nebraska Workers' Compensation Court shall be binding upon each party at interest unless an application for rehearing review has been filed with the compensation court within fourteen days following the date of rendition of the order or award.

Sec. 20. That section 48-178, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-178. The judge shall make such findings and orders, awards, or judgments as the Nebraska Workers' Compensation Court or judge is authorized by law to make. Such findings, orders, awards, and judgments shall be signed by the judge before whom such proceedings were had. When proceedings are had before a judge of the compensation court, his or her findings, orders, awards, and judgments shall be conclusive upon all parties at interest unless reversed or modified upon rehearing review or appeal as hereinafter provided. A

shorthand record or tape recording shall be made of all testimony and evidence submitted in such proceedings. The compensation court or judge thereof, at the party's expense, may appoint a court reporter or may direct a party to furnish a court reporter to be present and report or, by adequate mechanical means, to record and, if necessary, transcribe proceedings of any hearing. The charges for attendance shall be paid initially to the reporter by the employer or, if insured, by the employer's insurance carrier. The charges shall be taxed as costs and the party initially paying the expense shall be reimbursed by the party or parties taxed with the costs. The compensation court or judge thereof may award and tax such costs and apportion the same between the parties or may order the compensation court to pay such costs as in its discretion it may think right and equitable. If the expense is unpaid, the expense shall be paid by the party or parties taxed with the costs or may be paid by the compensation court. The reporter shall faithfully and accurately report or record the proceedings.

Sec. 21. That section 48-179, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-179. Either party at interest who refuses to accept the findings, order, award, or judgment of the Nebraska Workers' Compensation Court on the original hearing may, within fourteen days after the date thereof, file with the compensation court an application for a rehearing review before the compensation court, plainly stating the errors on which such party relies for reversal or modification and a brief statement of the relief sought. Such application must be specific as to each finding of fact and conclusion of law urged as error and the reason therefor. General allegations shall not be accepted. The party or parties appealing for review shall be bound by the allegations of error contained in the application and will be deemed to have waived all others. No party may file a motion for new trial, a motion for reconsideration, or a petition for rehearing before the judge at the original hearing. Such party shall at the same time file with the compensation court copies of such application for the other party or parties at interest. The compensation court shall then immediately serve upon such other party or parties by mail or otherwise, as elsewhere herein provided, a copy of such application for rehearing review, and shall proceed to hear the cause de neve within thirty days thereafter, except that when the

parties submit to a settlement conference, as prescribed and directed by the compensation court, the compensation court shall hear the cause within forty-five days thereafter unless a settlement is reached. A shorthand record or tape recording shall be made of all testimony and evidence submitted in such rehearing proceedings. The rehearing on the record of the original hearing. The review by the compensation court shall be held in Lancaster County, Nebraska, or in any other county in the state at the discretion of the compensation court. Within fourteen days after such rehearing review the compensation court shall make its findings, order, award, or judgment, determining the issues in such cause. Upon the joint stipulation of the parties to dismiss, the compensation court may dismiss such an application without a rehearing review. No new evidence may be introduced at such review hearing. The review panel may write an opinion, but need not do so, and may make its decision by a brief summary order. The compensation court may reverse or modify the findings, order, award, or judgment of the original hearing only on the grounds that the judge was clearly wrong on the evidence or the decision was contrary to law. On review, the compensation court may affirm, modify, reverse, or remand the judgment on the original hearing.

Sec. 22. That section 48-180, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-180. The Nebraska Workers' Compensation Court may, on its own motion, modify or change its findings, order, award, or judgment at any time before appeal and within ten days from the date of such findings, order, award, or judgment for the purpose of correcting any ambiguity, or clerical error, or patent or obvious error. The time for appeal shall not be lengthened because of the correction unless the correction substantially changes the result of the award.

Sec. 23. That section 48-182, Revised Statutes Supplement, 1991, be amended to read as follows:

48-182. In case either party at interest refuses to accept any final order of the Nebraska Workers' Compensation Court after rehearing on original hearing, such party may, within thirty fourteen days thereafter, file with the compensation court a notice of intention to appeal and within thirty an application for review and within fourteen days from the date of such final order file with the compensation court a praecipe

for a bill of exceptions. Within two months from the date of the filing of the praecipe, the court reporter or transcriber shall deliver to the clerk of the Nebraska Workers' Compensation Court a bill of exceptions which shall include a transcribed copy of the testimony and the evidence taken before the compensation court on original hearing, which transcribed copy when certified to by the person who made or transcribed the record shall constitute the bill of exceptions. The transcript and bill of exceptions shall be paid for by the party ordering the same, except that upon the affidavit of any claimant for workers' compensation, filed with or before the praecipe, that he or she is without means with which to pay and unable to secure such means, payment may, in the discretion of the compensation court, be waived as to such claimant and the bill of exceptions shall be paid for by the compensation court in the same manner as other compensation court expenses.

The procedure for preparation, settlement, signature, allowance, certification, filing, and amendment of a bill of exceptions shall be regulated and governed by rules of practice prescribed by the Supreme Court except as otherwise provided in this section.

When a bill of exceptions has been ordered according to law and the court reporter or transcriber fails to prepare and file the bill of exceptions with the clerk of the Nebraska Workers' Compensation Court within two months from the date of the filing of the praecipe, the Supreme Court or Court of Appeals compensation court may, on the motion of any party accompanied by a proper showing, grant additional time for the preparation and filing of the bill of exceptions under such conditions as the court may require. Applications for such an extension of time shall be regulated and governed by rules of practice prescribed by the Supreme Court. A copy of such order granting an extension of time shall be filed with the Nebraska Workers' Compensation Court by the party requesting such extension within five days after the date of such order compensation court.

Sec. 24. That section 48-185, Revised Statutes Supplement, 1991, be amended to read as follows:

48-185. Any appeal from the judgment of the Nebraska Workers' Compensation Court after a rehearing review shall be prosecuted and the procedure, including the designation of parties, handling of costs and the amounts thereof, filing of briefs, certifying the

opinion of the Supreme Court or decision of the Court of Appeals to the compensation court, handling of the bill of exceptions, and issuance of the mandate, shall be in accordance with the general laws of the state and procedures regulating appeals in actions at law from the district courts to the Supreme Court or Court of Appeals except as otherwise provided in section 48-182 and this section. The proceedings to obtain a reversal, vacation, or modification of judgments, awards, or final orders made by the compensation court after a rehearing review shall be by filing in the office of the clerk of the Nebraska Workers' Compensation Court, within thirty days after the rendition of such judgment or decree or the making of such final order, a notice of intention to prosecute such appeal signed by the appellant or his or her attorney of record. No motion for a new trial shall be required to be filed. An appeal shall be deemed perfected and the appellate court shall have jurisdiction of the cause when such notice of appeal shall have been filed in the office of the clerk of the Nebraska Workers' Compensation Court, and after being so perfected no appeal shall be dismissed without notice, and no step other than the filing of such notice of appeal shall be deemed jurisdictional. The clerk of the Nebraska Workers' Compensation Court shall forthwith forward a certified copy of such notice of appeal to the Clerk of the Supreme Court, whereupon the Clerk of the Supreme Court shall forthwith docket such appeal. Within thirty days from the date of filing of notice of appeal, the clerk of the Nebraska Workers' Compensation Court shall prepare and file with the Clerk of the Supreme Court a transcript certified as a true copy of the proceedings contained therein. The transcript shall contain the judgment, decree, or final order sought to be reversed, vacated, or modified and all pleadings filed with such clerk. Neither the form nor the substance of such transcript shall affect the jurisdiction of the appellate court. Such appeal shall be perfected within thirty days from the rendition of judgment by the compensation court, the cause shall be advanced for argument before the appellate court, and the appellate court shall render its judgment and write an opinion, if any, in such cases as speedily as possible. The findings of fact judgment made by the compensation court after rehearing review shall have the same force and effect as a jury verdict in a civil case. A judgment, order, or award of the compensation court may be modified, reversed, or set aside only upon the grounds that (1) the compensation court acted without or

in excess of its powers, (2) the judgment, order, or award was procured by fraud, (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award, or (4) the findings of fact by the compensation court do not support the order or award.

Sec. 25. Applications for rehearing pending in the Nebraska Workers' Compensation Court on the effective date of this act and cases in which a hearing has been held prior to such date but in which no award has been issued as of such date shall not be affected by the changes made in sections 48-125, 48-155, 48-156, 48-169, 48-170, 48-178, 48-179, 48-182, and 48-185 by this legislative bill, but any cause of action not in suit as of the effective date of this act and any action in suit in which a hearing has not been held by the compensation court prior to such date shall follow the procedures in such sections as amended by this legislative bill.

Sec. 26. That section 48-1,110, Revised Statutes Supplement, 1990, be amended to read as follows:

48-1,110. (1) Sections 48-101 to 48-1,110 and section 25 of this act shall be known and may be cited as the Nebraska Workers' Compensation Act.

(2) It is the intent of the Legislature that the changes made in Laws 1986, LB 811, shall not affect or alter any rights, privileges, or obligations existing immediately prior to July 17, 1986.

(3) On and after July 17, 1986, whenever the terms workmen's compensation and Workmen's Compensation appear in the statutes or in any appropriations measures enacted into law, they shall be taken to mean workers' compensation and Workers' Compensation, respectively.

Sec. 27. That section 48-808, Revised Statutes Supplement, 1991, be amended to read as follows:

48-808. The commission may also appoint a reporter to report and transcribe in duplicate all testimony given in hearings and trials before the commission and file such testimony with the commission. The commission shall certify and transmit one copy to the Court of Appeals Clerk of the Supreme Court in all cases in which there is an appeal under section 48-812.

Sec. 28. That section 48-812, Revised Statutes Supplement, 1991, be amended to read as follows:

48-812. Except as modified by the commission under section 48-809 or the other provisions of the

Industrial Relations Act, proceedings before the commission shall conform to the code of civil procedure applicable to the district courts of the state and appeals from its final orders ~~to the Supreme Court or Court of Appeals~~ shall be taken in the same manner and time as appeals from the district court, ~~to the Supreme Court or Court of Appeals~~, except that an order determining a bargaining unit or units shall not be appealable until after the results of the election have been certified by the commission. Appeals shall be heard and disposed of in the appellate court in the manner provided by law.

Sec. 29. That section 55-444, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

55-444. In every case coming before the Court of Military Review, ~~the Court of Appeals~~, or the Nebraska Supreme Court under sections 55-401 to 55-480 ~~the Nebraska Code of Military Justice~~, the State Judge Advocate shall appoint counsel to represent the accused and such counsel shall be qualified under section 55-423, except that the accused shall have the right to be represented before the Court of Military Review by civilian counsel if provided by ~~him~~ the accused.

Sec. 30. That section 55-445, Revised Statutes Supplement, 1991, be amended to read as follows:

55-445. (1) Upon petition of the accused and for good cause shown, the Court of Appeals or the Supreme Court pursuant to subsection (2) or (3) of section 24-1106 or section 24-1107 may grant a review of the record. The accused in cases reviewed by the Court of Military Review-

~~(2)~~ (2) The accused shall have thirty days from the time when he or she is notified of the decision of the Court of Military Review to petition the ~~appellate court~~ Court of Appeals for a review. Upon petition of the accused and for good cause shown, the appellate court may grant a review of the record. The appellate court shall act upon such petition within ninety days from receipt thereof.

~~(3)~~ (2) Upon filing the petition in the appellate court, the accused shall on the same date file a notice of his or her intention to appeal with the Court of Military Review, and the Court of Military Review shall within fifteen days forward the complete transcript of the case to the appellate court.

~~(4)~~ (3) In any case reviewed by it, the appellate court may act only with respect to the

findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the Court of Military Review. In a case reviewed upon the petition of the accused, that action need be taken only with respect to issues specified in the grant of review. The appellate court shall take action only with respect to matters of law.

(5) (4) If the appellate court sets aside the findings and sentence, it may, except when the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(6) (5) After it has acted on a case, the appellate court may direct the State Judge Advocate to return the record to the Court of Military Review for further review in accordance with the decision of the appellate court. Otherwise, unless there is to be further action by the Governor, the State Judge Advocate shall instruct the convening authority to take action in accordance with that decision. If the appellate court has ordered a rehearing but the convening authority finds a rehearing impracticable, the State Judge Advocate may dismiss the charges.

Sec. 31. That section 70-1326, Revised Statutes Supplement, 1991, be amended to read as follows:

70-1326. The procedure to obtain reversal, modification, or vacation of a decision rendered by the arbitration board shall be (1) by filing notice of appeal with the Nebraska Power Review Board within thirty days after the date of the filing of the decision with the Nebraska Power Review Board as provided in section 70-1321 or (2) by filing with the arbitration board and with the Nebraska Power Review Board a motion for rehearing within ten days after the filing of the decision with the Nebraska Power Review Board as provided in section 70-1321. If the arbitration board denies the motion for rehearing, a notice of appeal must be filed with the arbitration board and with the Nebraska Power Review Board within thirty days after the date of the filing by the arbitration board with the Nebraska Power Review Board of the decision denying the motion to the party appealing, except that when the arbitration board fails to file a decision on the motion for rehearing within thirty days after such motion is filed, the appeal to the Court of Appeals or the Supreme Court pursuant to subsection (2) or (3) of section

24-1106 or section 24-1107 may be perfected by filing a notice of appeal before the arbitration board files a decision on the motion for rehearing and the review shall be the same as if the board had denied the motion for rehearing. Oral arguments on a motion for rehearing shall be granted when requested. An appeal shall be deemed perfected and the appellate court shall have jurisdiction of the cause when a notice of an appeal has been filed with the Nebraska Power Review Board and appeal has been taken in the manner provided by law for appeals from the district court in civil cases.

Sec. 32. That section 75-136, Revised Statutes Supplement, 1991, be amended to read as follows:

75-136. If a party to any proceeding is not satisfied with the order entered by the commission other than an order entered under sections 75-322.02 to 75-322.04, such party may appeal to the Court of Appeals or the Supreme Court pursuant to subsection (2) or (3) of section 24-1106 or section 24-1107 as provided in section 75-137 to reverse, vacate, or modify the order. In the case of an order entered under sections 75-322.02 to 75-322.04, the party may (1) seek the review of the Court of Appeals or the Supreme Court as provided in section 75-137 or (2) seek judicial review of the order under section 75-136.01. Subdivisions (1) and (2) of this section are mutually exclusive and the choice of either section 75-136.01 or 75-137 shall govern the appeal process.

Sec. 33. That section 75-137, Revised Statutes Supplement, 1991, be amended to read as follows:

75-137. The procedure to obtain reversal, modification, or vacation of an order entered by the commission shall be (1) by filing a notice of appeal with the commission within thirty days after the date of the mailing of a copy of the order by the commission to the party appealing or (2) by filing a motion for rehearing within ten days after the date of the mailing of a copy of the order by the commission to the party appealing. If the commission overrules the motion for rehearing, a notice of appeal must be filed with the commission within thirty days after the date of the mailing of a copy of the order overruling the motion to the party appealing. When the commission fails to enter an order ruling on the motion for rehearing within thirty days after such motion is filed, the appeal may be perfected by filing a notice of appeal before the commission enters an order ruling on the motion for

rehearing, and the review by the ~~Court of Appeals or the Supreme Court~~ appellate court shall be the same as if the commission had overruled the motion for rehearing. Oral arguments on a motion for rehearing shall be granted when requested and such arguments must be heard by a majority of the commission. An appeal shall be deemed perfected and the appellate court shall have jurisdiction of the cause when a notice of appeal has been filed and the docket fee required by section 33-103 has been deposited in the office of the secretary of the commission. After being perfected no appeal shall be dismissed without notice, and no step other than the filing of such notice of appeal and the depositing of such docket fee shall be deemed jurisdictional.

Sec. 34. That section 75-138, Revised Statutes Supplement, 1991, be amended to read as follows:

75-138. The verbatim testimony transcribed by the official stenographer, including all exhibits or affidavits received in nonhearing proceedings, shall constitute the bill of exceptions. The pleadings, order appealed, and bill of exceptions duly certified to by the secretary of the commission shall constitute the complete record on appeal, ~~to the Court of Appeals or the Supreme Court~~, except that the pleadings, affidavits received, and order appealed shall constitute the complete record when the commission dismisses or denies without a hearing an application, petition, or complaint.

Sec. 35. That section 77-1510, Revised Statutes Supplement, 1991, as amended by section 128, Legislative Bill 1063, Ninety-second Legislature, Second Session, 1992, be amended to read as follows:

77-1510. Appeals may be taken from any action of the county board of equalization to the district court in the following manner:

(1) The appeal shall be filed within forty-five days after adjournment of the board which, for actions taken pursuant to sections 77-1502 and 77-1504, shall be deemed to be May 31 of the year in which the action is taken, except that for personal property appeals in 1992, the date of adjournment shall be deemed to be June 15;

(2) The appeal shall be deemed to be filed for purposes of granting jurisdiction with the filing of the petition and praecipe for summons in the district court and the filing of a request for a transcript with the county clerk. The county clerk shall prepare the transcript as soon as practicable after requested and

shall deliver the same to the taxpayer for filing with the clerk of the district court upon receipt from the taxpayer of the appropriate fees for its preparation. No proceedings shall be held on the appeal of the taxpayer until the summons has been served and the transcript has been filed in district court; and

(3) A bond of no less than fifty dollars and no more than two hundred dollars, as determined by the district court, shall be filed with the petition in the form of a cash deposit or signature bond, property bond, or other bond approved by the county clerk.

After an appeal has been initiated, the board shall have no power or authority to compromise, settle, or otherwise change the action it has taken with respect to such assessment, and exclusive jurisdiction thereof shall be vested in the district court, except that the board may offer to confess judgment pursuant to section 77-1510.01. No appeal shall in any manner suspend the collection of any tax or the duties of officers relating thereto during the pendency of the appeal, and all taxes affected thereby, which may be collected, shall be distributed as though no appeal were pending.

If by final order of a court it is thereafter determined that the value of the property should be reduced, any tax collected on the value in excess of the taxable value found by the court shall be refunded in the manner provided in section 77-1736.06, and the taxpayer shall not have been required to pay the tax under protest or initiate a refund claim for the tax paid. A person shall not be entitled to a refund pursuant to this section unless the person has prevailed in an action against the county which was filed pursuant to this section. A person shall not be entitled to a refund pursuant to this section if subsections (4) through (7) of section 77-1736.04 are applicable.

The county may cross appeal without giving bond for the reason that the taxable value of the owner's property is too low and should be increased in value as of the assessment date from which the appeal was taken.

Any party may appeal the final order of the district court entered pursuant to this section to the Court of Appeals ~~or the Supreme Court~~ in the manner provided for appeals in equity cases, and the appellate court shall thereafter review the case de novo on the record.

Sec. 36. That section 77-1609, Revised Statutes Supplement, 1991, be amended to read as follows:

77-1609. If an appeal is taken to the Court of Appeals or the Supreme Court from the decision of the district court, the appellant shall, on or before the time such appeal is taken, file with the county treasurer a notice to the effect that such appeal has been taken and also file in the district court a copy of such notice, verified by affidavit, to the effect that such notice has been filed with the county treasurer. The county treasurer shall not be charged with such notice of appeal in case of a failure to file with him or her a copy of such petition and notice.

Sec. 37. That section 77-1610, Revised Statutes Supplement, 1991, be amended to read as follows:

77-1610. If the tax books have been delivered to the county treasurer for collection of the taxes before the determination of such appeal in the district court, a copy of such decision shall be certified by the clerk of the court to the county treasurer who shall thereupon distribute or return to the parties entitled thereto the tax so held undistributed in accordance with such decision and the county treasurer shall correct the tax books in his or her office to conform to such decision unless a further appeal is taken to the Court of Appeals or the Supreme Court, in which case the county treasurer shall hold the taxes until the final determination of the appeal and thereupon distribute or return the same in conformity to such decision.

Sec. 38. That section 81-1387, Revised Statutes Supplement, 1991, be amended to read as follows:

81-1387. (1) Proceedings against a party alleging a violation of section 81-1386 shall be commenced by filing a complaint with the commission within one hundred eighty days of the alleged violation thereby causing a copy of the complaint to be served upon the accused party. The accused party shall have ten days within which to file a written answer to the complaint. If the commission determines that the complaint has no basis in fact, the commission may dismiss the complaint. If the complaint has a basis in fact, the commission shall set a time for hearing. The parties shall be permitted to be represented by counsel, summon witnesses, and request the commission to subpoena witnesses on the requester's behalf.

(2) The commission shall file its findings of fact and conclusions of law. If the commission finds that the party accused has committed a prohibited practice, the commission, within thirty days of its

decision, shall order an appropriate remedy. Any party may petition the district court for injunctive relief pursuant to rules of civil procedure.

(3) Any party aggrieved by any decision or order of the commission may, within thirty days from the date such decision or order is filed, appeal therefrom to the Court of Appeals, ~~or the Supreme Court pursuant to subsection (2) or (3) of section 24-1106 or section 24-1107.~~

(4) Any order or decision of the commission may be modified, reversed, or set aside by the ~~Court of Appeals or the Supreme Court~~ appellate court on one or more of the following grounds and on no other:

(a) If the commission acts without or in excess of its powers;

(b) If the order was procured by fraud or is contrary to law;

(c) If the facts found by the commission do not support the order; and

(d) If the order is not supported by a preponderance of the competent evidence on the record considered as a whole.

Sec. 39. That section 83-1224, Revised Statutes Supplement, 1991, be amended to read as follows:

83-1224. (1) Any party aggrieved by the findings, conclusions, or final decision and order of the hearing officer shall be entitled to judicial review under this section. Any party of record also may seek enforcement of the final decision and order of the hearing officer pursuant to this section.

(2) Proceedings for judicial review shall be instituted by filing a petition in the district court of the county of residence of the person with developmental disabilities within thirty days after service of the final decision and order on the party seeking such review. All parties of record shall be made parties to the proceedings. The court, in its discretion, may permit other interested parties to intervene.

(3) The filing of a petition for judicial review shall operate to stay the enforcement of the final decision and order of the hearing officer. While judicial proceedings are pending and unless the parties otherwise agree, the person with developmental disabilities shall remain in his or her current placement. If the health or safety of the person with developmental disabilities or of other persons would be endangered by delaying a change in placement, the service provider may make such change without prejudice

to the rights of any party.

(4) Within fifteen days after receiving notification that a petition for judicial review has been filed or, if good cause is shown, within such further time as the court may allow, the department shall prepare and transmit to the court a certified transcript of the proceedings before the hearing officer. Any deposition or exhibit introduced before the hearing officer shall, upon demand of the party who introduced such deposition or exhibit, be returned to such party for use in the review proceedings.

(5) Judicial review shall be conducted by the court without a jury. The court shall receive the records of the administrative proceedings, hear additional evidence at the request of a party, base its decision on the preponderance of the evidence, and grant such relief as the court determines is appropriate.

(6) An aggrieved party may secure a review of any final judgment of the district court under this section by appeal to the Supreme Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals to the Supreme Court in civil cases and shall be heard de novo on the record.

(7) When no petition for judicial review or other civil action is filed within thirty days after service of the final decision and order on all of the parties, the hearing officer's final decision and order shall become effective. Proceedings for enforcement of a hearing officer's final decision and order shall be instituted by filing a petition for appropriate relief in the district court of the county of residence of the person with developmental disabilities within one year after the date of the hearing officer's final decision and order.

Sec. 40. That section 85-1418, Revised Statutes Supplement, 1991, be amended to read as follows:

85-1418. (1) No state warrant shall be issued by the Department of Administrative Services or used by any public institution for the purpose of funding any program or capital construction project which has not been approved or which has been disapproved by the commission pursuant to the Coordinating Commission for Postsecondary Education Act. If state funding for any such program or project cannot be or is not divided into warrants separate from other programs or projects, the department shall reduce a warrant to the public institution, which warrant includes funding for the program or project, by the amount of tax funds

designated by the Legislature which are budgeted in that fiscal year by the public institution for use for the program or project.

(2) The department may reduce the amount of state aid distributed to a community college area pursuant to sections 79-2651 and 79-2651.02 by the amount of funds used by the area to provide a program or capital construction project which has not been approved or which has been disapproved by the commission.

(3) The district court of Lancaster County shall have jurisdiction to enforce an order or decision of the commission entered pursuant to the Coordinating Commission for Postsecondary Education Act and to enforce this section.

(4) Any person or public institution aggrieved by a final order of the commission entered pursuant to section 85-1413, 85-1414, 85-1415, or 85-1416 shall be entitled to judicial review of the order. Proceedings for review shall be instituted by filing a petition in the district court of Lancaster County within thirty days after public notice of the final decision by the commission is given. The filing of the petition or the service of summons upon the commission shall not stay enforcement of such order. The review shall be conducted by the court without a jury on the record of the commission. The court shall have jurisdiction to enjoin enforcement of any order of the commission which is (a) in violation of constitutional provisions, (b) in excess of the constitutional or statutory authority of the commission, (c) made upon unlawful procedure, or (d) affected by other error of law.

(5) A party may secure a review of any final judgment of the district court by appeal to the Supreme Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals to the Supreme Court in civil cases and shall be heard de novo on the record.

Sec. 41. That original sections 8-1736, 13-512, 48-120, 48-155, 48-156, 48-163, 48-169, 48-170, 48-178, 48-179, 48-180, and 55-444, Reissue Revised Statutes of Nebraska, 1943, section 48-1,110, Revised Statutes Supplement, 1990, sections 24-1104, 25-1140, 25-1315.03, 25-21,167, 29-116, 29-2315.01, 29-2316, 42-351, 43-2,126, 46-210, 48-125, 48-182, 48-185, 48-808, 48-812, 55-445, 70-1326, 75-136, 75-137, 75-138, 77-1609, 77-1610, 81-1387, 83-1224, and 85-1418, Revised Statutes Supplement, 1991, and section 77-1510, Revised Statutes Supplement, 1991, as amended by section 128, Legislative Bill 1063, Ninety-second Legislature, Second Session, 1992, are repealed.