

AMENDMENTS TO LB157

(Amendments to E&R amendments, ER37)

Introduced by Conrad, 46.

1 1. Strike section 15 and insert the following new sections:

2 Section 1. A statute that authorizes the award of attorney's fees
3 to a party in a civil action or proceeding also authorizes an appellate
4 court to award attorney's fees if the party prevails on an appeal from a
5 judgment or order in the action or proceeding. This section does not
6 apply if another section of law specifically authorizes or prohibits the
7 award of attorney's fees on an appeal from such a judgment or order.

8 Sec. 2. Section 25-323, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 25-323 The court may determine any controversy between parties
11 before it when it can be done without prejudice to the rights of others
12 or by saving their rights; but when a determination of the controversy
13 cannot be had without the presence of other parties, the court shall ~~must~~
14 order them to be brought in.

15 ~~Any person whose negligence was or may have been a proximate cause~~
16 ~~of an accident or occurrence alleged by the plaintiff, other than parties~~
17 ~~who have been released by the plaintiff and are not subject to suit~~
18 ~~pursuant to section 25-21,185.11, may be brought into the suit by any~~
19 ~~party in the manner provided in section 25-331 or 25-705.~~

20 Sec. 3. Section 25-331, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 25-331 (1)(a) ~~A (1) At any time after commencement of the action, a~~
23 ~~defending party may, as a third-party plaintiff, serve may cause a~~
24 ~~summons and complaint on a nonparty:~~

25 (i) ~~Who to be served upon a person not a party to the action who is~~
26 ~~or may be liable to the defending party third-party plaintiff for all or~~

1 part of the ~~plaintiff's~~ claim against the defending party; or

2 (ii) Whose negligence was or may have been a proximate cause of the
3 transaction or occurrence that is the subject matter of the plaintiff's
4 claim and who is not precluded by section 25-21,185.11 from being made a
5 party third-party plaintiff.

6 (b) The third-party plaintiff shall, by motion, need not obtain the
7 court's leave to make the service if the third-party plaintiff files the
8 third-party complaint more not later than fourteen ten days after serving
9 its filing the original answer. Otherwise the third-party plaintiff must
10 obtain leave of the trial court on motion upon notice to all parties to
11 the action.

12 (c) The person served with the summons and third-party complaint,
13 hereinafter called the third-party defendant, has shall have all the
14 rights and obligations of a defendant, including those created the rights
15 authorized by this section and by the rules promulgated by the Supreme
16 Court pursuant to sections 25-801.01 and 25-1273.01.

17 (d) The third-party defendant may assert against the plaintiff any
18 defense that defenses which the third-party plaintiff has to the
19 plaintiff's claim. The third-party defendant may also assert any claim
20 against the plaintiff any claim arising out of the transaction or
21 occurrence that is the subject matter of the plaintiff's claim against
22 the third-party plaintiff.

23 (e) The plaintiff may assert any claim against the third-party
24 defendant any claim arising out of the transaction or occurrence that is
25 the subject matter of the plaintiff's claim against the third-party
26 plaintiff. The third party defendant shall have all the rights of a
27 defendant including the rights authorized by this section. The court on
28 its own motion, or motion of any party, may move to strike the third-
29 party claim, or for its severance or separate trial if the third party
30 claim should delay trial, might tend to confuse a jury, or in any way
31 jeopardize the rights of the plaintiff.

1 (f) A defending party may assert against the third-party defendant a
2 claim that the third-party defendant is liable to the defending party for
3 all or part of the claim against the defending party.

4 (g) A third-party defendant ~~or subsequent defendants~~ may bring in a

5 nonparty if subdivision (1)(a) of this section would allow a defending
6 party to do so ~~proceed under this section.~~

7 (h) Any party may move to strike the third-party claim, to sever it,
8 or try it separately.

9 (2) When a claim ~~counterclaim~~ is asserted against a plaintiff, the
10 plaintiff may bring in a nonparty if subdivision (1)(a) of ~~cause a third~~
11 ~~party to be brought in under circumstances which under~~ this section would
12 allow a defending party ~~entitle a defendant~~ to do so.

13 Sec. 18. Sections 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15,
14 16, 17, 20, and 21 become operative three calendar months after the
15 adjournment of this legislative session. The other sections of this act
16 become operative on their effective date.

17 2. On page 49, line 27; and page 50, line 10, strike "7" and insert
18 "10".

19 3. On page 66, line 25, after "sections" insert "25-323, 25-331,".

20 4. On page 67, line 3, after "sections" insert "25-323, 25-331,";
21 and in line 6 after the semicolon insert "to provide for awards of
22 attorney's fees in appeals; to change provisions and modernize language
23 relating to third-party practice;".

24 5. Renumber the remaining sections accordingly.