

SECOND REGULAR SESSION

SENATE BILL NO. 696

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHNEIDER.

Read 1st time January 12, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S2311.02I

AN ACT

To repeal sections 138.430, 196.790, 426.220, 426.230, 429.360, 512.180, 512.190, 512.200, 512.210, 512.250, 512.270, 512.280, 512.290, 512.300, 512.310, 512.320, 534.350, 534.360, 535.110, 541.020 and 571.090, RSMo 1994, and 479.500, 534.380 and 535.030, RSMo Supp. 1997, relating to appellate review by trial de novo, and to enact in lieu thereof fifteen new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 138.430, 196.790, 426.220, 426.230, 429.360, 512.180, 512.190, 512.200, 512.210, 512.250, 512.270, 512.280, 512.290, 512.300, 512.310, 512.320, 534.350, 534.360, 535.110, 541.020 and 571.090, RSMo 1994, and 479.500, 534.380 and 535.030, RSMo Supp. 1997, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 138.430, 196.790, 426.220, 426.230, 429.360, 479.500, 512.180, 534.350, 534.360, 534.380, 535.330, 535.110, 541.020, 570.090 and 571.091, to read as follows:

138.430. 1. Every owner of real property or tangible personal property shall have the right to appeal from the local boards of equalization to the state tax commission under rules prescribed by the state tax commission, within the time prescribed in this chapter or thirty days following the final action of the local board of equalization, whichever date later occurs, concerning all questions and disputes involving the assessment against such property, the correct valuation to be placed on such property, the method or formula used in determining the valuation of such property, or the assignment of a discriminatory assessment to such property. The commission shall investigate all such appeals and shall correct any assessment or valuation which is shown to be unlawful, unfair, improper, arbitrary or capricious. Any person aggrieved by the decision

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

of the commission may seek review as provided in chapter 536, RSMo.

2. In order to investigate such appeals, the commission may inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification or assessment of the property. The commission may make its decision regarding the assessment or valuation of the property based solely upon its inquiry and any evidence presented by the parties to the commission, or based solely upon evidence presented by the parties to the commission.

3. Every owner of real property or tangible personal property shall have the right to appeal to the circuit court of the county in which the collector maintains his office, from the decision of the local board of equalization not later than thirty days after the final decision of the board of equalization concerning all questions and disputes involving the exclusion or exemption of such property from assessment or from the tax rolls pursuant to the Constitution of the United States or the constitution or laws of this state, or of the taxable situs of such property. The appeal shall be [as a trial de novo] **conducted** in the manner prescribed [for nonjury civil proceedings] **by section 536.150, RSMo.**

4. Upon the timely filing of an appeal as provided in this section, the state tax commission or the clerk of the circuit court, as applicable, shall send to the county collector to whom the taxes on the property involved would be due, a notice that an appeal has been filed, which notice shall contain the name and address of the taxpayer filing the appeal.

5. If the circuit court, after review of the appeal, finds that the appeal is not a proper subject for the appeal to the circuit court as provided in subsection 3 of this section, it shall transfer the appeal to the state tax commission for consideration.

196.790. Every person, firm or corporation who shall violate any of the provisions of sections 196.755 to 196.765, 196.780 and 196.785, shall forfeit and pay to the state of Missouri, for the use of the school fund for every such violation, the sum of fifty dollars and costs of suit, to be recovered by civil action **in the circuit court** in the name of the state of Missouri on the relation of any person having knowledge of the facts before [an associate circuit judge, or circuit] a judge assigned to hear the cause[, of] **in** the city or county where such violation occurs, subject to the right of [an application for trial de novo or] appeal[, as the case may be,] as in other civil cases; and it is further enacted that every person, firm or corporation who shall violate the provisions of sections 196.750 to 196.810, in addition to the civil liability to the state of Missouri [herein] provided **in this section**, shall be deemed guilty of a misdemeanor, and shall for the first offense be punished by a fine of not less than fifty dollars nor more than one hundred dollars or by imprisonment not exceeding thirty days, and for each subsequent offense, by a fine of not less than two hundred and fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment, in the discretion of the court.

426.220. All appeals allowed by virtue of section 426.210 shall be taken and made by the appellant, or someone for him, making and filing an affidavit that the appeal is not taken for vexation or delay, but because affiant believes that appellant is prejudiced by the decision appealed from, and by giving bond to the state of Missouri in such sum as the assignee may require, and with such sureties as he may approve, conditioned that appellant will prosecute his appeal with due diligence, and pay all cost thereon awarded against appellant. If judgment for costs be rendered against appellant, it shall be against him and his sureties on the bond. [In all other respects appeals shall be taken, certified and proceeded with in the same manner as applications for a trial de novo from judgments of associate circuit judges.]

426.230. Upon such appeal being allowed and certified, as in section 426.220 is required, the court shall become possessed of the case, and shall proceed to hear and determine the same, in the same manner as if such case was pending before a circuit judge [on an application for trial de novo from the judgment of an associate circuit judge]; and appeals may be taken from the judgment of the court, in the same manner as appeals are now allowed by law from judgments of circuit judges in this state.

429.360. The process, practice and procedure[, including applications for trial de novo,] in suits to enforce mechanics' liens which are heard by an associate circuit judge without special assignment shall be as nearly as practicable the same as provided in other civil suits heard by associate circuit judges. When a case is specially assigned to an associate circuit judge to hear upon a record, the process, practice and procedure, including appeals, shall be the same as if the case was being heard by a circuit judge.

479.500. 1. In the twenty-first judicial circuit, a majority of the circuit judges, en banc, may establish a traffic court, which shall be a division of the circuit court, and may authorize the appointment of not more than three municipal judges who shall be known as traffic judges. The traffic judges shall be appointed by a traffic court judicial commission consisting of the presiding judge of the circuit, who shall be the chair, one circuit judge elected by the circuit judges, one associate circuit judge elected by the associate circuit judges of the circuit, and two members appointed by the county executive of St. Louis County, each of whom shall represent one of the two political parties casting the highest number of votes at the next preceding gubernatorial election. The procedures and operations of the traffic court judicial commission shall be established by circuit court rule.

2. Traffic judges may be authorized to act as commissioners to hear in the first instance nonfelony violations of state law involving motor vehicles, and such other offenses as may be provided by circuit court rule. Traffic judges may also be authorized to hear in the first instance violations of county and municipal ordinances involving motor vehicles, and other county ordinance violations, as provided by circuit court rule.

3. In the event that a county municipal court is established pursuant to section 66.010,

RSMo, which takes jurisdiction of county ordinance violations the circuit court may then authorize the appointment of no more than two traffic judges authorized to hear municipal ordinance violations other than county ordinance violations, and to act as commissioner to hear in the first instance nonfelony violations of state law involving motor vehicles, and such other offenses as may be provided by rule. These traffic court judges also may be authorized to act as commissioners to hear in the first instance petitions to review decisions of the department of revenue or the director of revenue filed pursuant to sections 302.309, 302.311, 302.535 and 302.750, RSMo.

4. In establishing a traffic court, the circuit may be divided into such sectors as may be established by a majority of the circuit and associate circuit judges, en banc. The traffic court in each sector shall hear those cases arising within the territorial limits of the sector unless a case arising within another sector is transferred as provided by operating procedures.

5. Traffic judges shall be licensed to practice law in this state and shall serve at the pleasure of a majority of the circuit and associate circuit judges, en banc, and shall be residents of St. Louis County, and shall receive from the state as annual compensation an amount equal to one-third of the annual compensation of an associate circuit judge. Each judge shall devote approximately one-third of his working time to the performance of his duties as a traffic judge. Traffic judges shall not accept or handle cases in their practice of law which are inconsistent with their duties as a traffic judge and shall not be a judge or prosecutor for any other court. Traffic judges shall not be considered state employees and shall not be members of the state employees' or judicial retirement system or be eligible to receive any other employment benefit accorded state employees or judges.

6. A majority of the judges, en banc, shall establish operating procedures for the traffic court which shall provide for regular sessions in the evenings after 6:00 p.m. and for Saturday or other sessions as efficient operation and convenience to the public may require. Proceedings in the traffic court, except when a judge is acting as a commissioner pursuant to this section, shall be conducted as provided in supreme court rule 37. The hearing shall be before a traffic judge without jury, and the judge shall assume an affirmative duty to determine the merits of the evidence presented and the defenses of the defendant and may question parties and witnesses. No term of imprisonment or confinement may be assessed by a traffic judge. In the event a jury trial is requested, the cause shall be certified to the circuit court for trial by jury as otherwise provided by law. Clerks and computer personnel shall be assigned as needed for the efficient operation of the court.

7. In establishing operating procedure, provisions shall be made for appropriate circumstances whereby defendants may enter not guilty pleas and obtain trial dates by telephone or written communication without personal appearance, or to plead guilty and deliver by mail or electronic transfer or other approved method the specified amount of the fine and costs as otherwise provided by law, within a specified period of time.

8. Operating procedures shall be provided for electronic recording of proceedings, except that if adequate recording equipment is not provided at county expense, then, in that event, a person aggrieved by a judgment of a traffic judge or commissioner **finding a violation of a county or municipal ordinance** shall have the right of a trial de novo. The procedures for perfecting the right of a trial de novo shall be the same as that provided under [sections 512.180 to 512.320, RSMo, except that the provisions of subsection 2 of section 512.180, RSMo, shall not apply to such cases] **section 479.200, RSMo.**

9. The circuit court shall only have the authority to appoint two commissioners with the jurisdiction provided in subsection 3 of this section.

10. All costs to establish and operate a county municipal court under section 66.010, RSMo, and this section shall be borne by such county.

512.180. 1. [Any person aggrieved by a judgment in a civil case tried without a jury before an associate circuit judge, other than an associate circuit judge sitting in the probate division or who has been assigned to hear the case on the record under procedures applicable before circuit judges, shall have the right of a trial de novo in all cases where the petition claims damages not to exceed five thousand dollars.

2.] In all [other] contested civil cases tried with or without a jury before an associate circuit judge or on assignment under such procedures applicable before circuit judges or in any misdemeanor case or county ordinance violation case a record shall be kept, and any person aggrieved by a judgment rendered in any such case may have an appeal upon that record to the appropriate [appellate] **district of the court of appeals**. At the discretion of the judge, but in compliance with the rules of the supreme court, the record may be a stenographic record or one made by the utilization of electronic, magnetic, or mechanical sound or video recording devices.

2. Appeals to the court of appeals or to the supreme court shall be governed by the same rules applicable to appeals from judgments rendered by circuit judges.

[512.190. 1. The right of trial de novo provided in subsection 1 of section 512.180 shall be perfected by filing an application for trial de novo with the clerk serving the associate circuit judge within ten days after the judgment is rendered. A copy of the application shall be mailed by the clerk to the opposing party or his attorney of record or served upon him as provided by law for the service of notices within fifteen days after the judgment was rendered. No application for a trial de novo shall stay execution unless and until the applicant, or some person for him, together with one or more solvent sureties to be approved by the associate circuit judge, within the time prescribed in the first sentence of this section, enter into a recognizance before the associate circuit judge to the adverse party, in a sum sufficient to secure the payment of such judgment and costs, conditioned that the applicant will prosecute his application for trial de novo with due diligence to a

decision, and that if on such trial de novo judgment be given against him, he will pay such judgment, and that, if his application for trial de novo be dismissed, he will pay the judgment rendered by the associate circuit judge, together with the costs.

2. Appeals to the court of appeals or to the supreme court shall be governed by the same rules applicable to appeals from judgments rendered by circuit judges.]

[512.200. Such recognizance must be signed by the parties entering into the same, and be approved by the associate circuit judge, and may be in the following form:

We the undersigned, and, acknowledge ourselves indebted to in the sum of dollars, to be void upon this condition. Whereas, has made application for a trial de novo from a judgment of, an associate circuit judge, in an action between, plaintiff, and, defendant; now, if on such trial de novo judgment be given against the applicant, and he shall satisfy such judgment, or if his application shall be dismissed, and he shall pay the judgment of the associate circuit judge, together with the cost of the appeal, this recognizance shall be void.

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A B

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C D

Approved, day of, 19....

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Associate Circuit Judge]

[512.210. If an application for trial de novo is timely filed and a bond be given and approved and, in the meantime, execution shall have been issued, the associate circuit judge shall give the applicant a certificate that an application for trial de novo in the cause has been allowed and bond given, and on presentation of such certificate to the sheriff, he shall forthwith release the property of the defendant that may have been taken in execution.]

[512.250. When an application for a trial de novo is timely filed, the associate circuit judge or the clerk who has custody of the case papers shall forthwith transmit the case papers in the cause or a transcript thereof to the clerk receiving cases originally filed for hearing and determination before a circuit judge, and the cause shall thereupon be assigned for a trial de novo before a circuit or associate circuit judge in accordance with assignment procedures prescribed by local circuit court rule or as directed by the presiding judge of the circuit.]

[512.270. The judge assigned to hear the cause shall proceed to hear, try and determine the same anew with a record of the proceedings being made, without regarding

any error, defect or other imperfection on the trial, judgment or other proceedings of the associate circuit judge in relation to the cause.]

[512.280. The same cause of action, and no other, that was tried before the associate circuit judge, shall be tried before the judge upon the trial de novo; provided, that new parties, plaintiff or defendant, necessary to a complete determination of the cause of action, may be added in the trial de novo.]

[512.290. In cases wherein the summons shall be personally served on the defendant, no setoff nor counterclaim shall be pleaded in the trial de novo proceedings that was not pleaded before the associate circuit judge.]

[512.300. In all cases of an application for trial de novo, the bill of items of the account sued on or filed as a counterclaim or setoff, or the statement of the plaintiff's cause of action, or of defendant's counterclaim or setoff, or other ground of defense filed before the associate circuit judge, may be amended upon a trial de novo to supply any deficiency or omission therein, when by such amendment substantial justice will be promoted; but no new item or cause of action not embraced or intended to be included in the original account or statement shall be added by such amendment. Such amendment shall be allowed upon such terms as to costs as the court may deem just and proper.]

[512.310. The trial de novo shall be governed by the practice in trials before circuit judges, except that by agreement of parties the case may be tried by a jury of not less than six persons.]

[512.320. In all cases of an application for trial de novo from an associate circuit judge, if on a trial anew, the judgment be against the applicant, such judgment shall be rendered against him or against him and his sureties in the recognizance for the application for trial de novo, if such recognizance be given.]

534.350. The judge rendering judgment in any such cause may issue execution at any time after judgment, but such execution shall not be levied until after the expiration of the time allowed for the filing of an [application for trial de novo or the taking of an] appeal, except as [in the next succeeding section is] provided **in section 534.360.**

534.360. If it shall appear to the officer having charge of the execution that the defendant therein is about to remove, conceal or dispose of his property, so as to hinder or delay the levy, the rents and profits, damages and costs may be levied before the expiration of the time allowed for the filing of [an application for a trial de novo or taking] an appeal.

534.380. [Applications for trials de novo and] Appeals shall be allowed and conducted in the manner provided in chapter 512, RSMo. [Application for a trial de novo or] **An** appeal shall not stay execution for restitution of the premises unless the defendant gives bond within the time for appeal. The bond shall be for the amount of the judgment and with the condition to stay waste and to pay all subsequently accruing rent, if any, into court within ten days after it becomes due,

pending determination of the [trial de novo or] appeal, subject to the judge's discretion. However, in any case in which the defendant receives a reduction in rent due to a local, state or federal subsidy program, the amount of the bond shall be reduced by the amount of said subsidy. Execution other than for restitution shall be stayed if the defendant files a bond in the proper amount at such time as otherwise provided by law.

535.030. 1. Such summons shall be served as in other civil cases at least four days before the return day of the summons, however, the return date shall be set for no later than ten days after service.

2. In addition to attempted personal service, the plaintiff may request, and thereupon the judge, before whom the proceeding is commenced, shall make an order directing that the officer, or other person empowered to execute the summons, shall also serve the same by securely affixing a copy of such summons and the complaint in a conspicuous place on the dwelling of the premises in question at least ten days before the return date of such summons, and by also mailing a copy of the summons and complaint to the defendant at the defendant's last known address by ordinary mail and by certified mail, return receipt requested, deliver to addressee only, at least ten days before the return date. If the officer, or other person empowered to execute the summons, shall return that the defendant is not found, or that the defendant has absconded or vacated his usual place of abode in this state, and if proof be made by affidavit of the posting and of the mailing of a copy of the summons and complaint, the judge shall at the request of the plaintiff proceed to hear the case as if there had been personal service, and judgment shall be rendered and proceedings had as in other cases, except that no money judgment shall be granted the plaintiff where the defendant is in default and service is by the posting and mailing procedure set forth in this section.

3. If the plaintiff does not request service of the original summons by posting and mailing as provided in subsection 2 of this section, and if the officer, or other person empowered to execute the summons, makes return that the defendant is not found, or that the defendant has absconded or vacated the defendant's usual place of abode in this state, the plaintiff may request the issuance of an alias summons and service of the same by posting and mailing in the time and manner provided in subsection 2 of this section. In addition, the plaintiff or an agent of the plaintiff who is at least eighteen years of age may serve the summons by posting and mailing a copy of the summons in the time and manner provided in subsection 2 of this section. Upon proof by affidavit of the posting and of the mailing of a copy of the summons or alias summons and the complaint, the judge shall proceed to hear the case as if there had been personal service, and judgment shall be rendered and proceedings had as in other cases, except that no money judgment shall be granted the plaintiff where the defendant is in default and service is by the posting and mailing procedure provided in subsection 2 of this section.

4. On the date judgment is rendered as provided in this section where the defendant is in

default, the court shall mail to the defendant at the defendant's last known address by certified mail, with a request for return receipt and with directions to deliver to the addressee only, a notice informing the defendant of the judgment and the date it was entered, and stating that the defendant has ten days from the date of the judgment to file a motion to set aside the judgment [or to file an application for a trial de novo in the circuit court, as the case may be], and that unless the judgment is set aside [or an application for a trial de novo is filed within ten days], the judgment will become final and the defendant will be subject to eviction from the premises without further notice.

535.110. [Applications for trials de novo and] Appeals shall be allowed and conducted in the manner provided in chapter 512, RSMo; but no [application for a trial de novo or] appeal shall stay execution unless the defendant [give] **gives** bond, with security sufficient to secure the payment of all damages, costs and rent then due, and with condition to stay waste and to pay all subsequently accruing rent, if any, into court within ten days after it becomes due, pending determination of the [trial de novo or] appeal.

541.020. Except as otherwise provided by law, the circuit courts shall have exclusive original jurisdiction in all cases of felony, misdemeanor and infractions. Except as otherwise provided by law, circuit judges may hear and determine originally all cases of felony, misdemeanor and infractions [and may hear and determine upon a trial de novo cases of misdemeanor and infractions].

571.090. 1. A permit to acquire a concealable firearm shall be issued by the sheriff of the county in which the applicant resides, if all of the statements in the application are true, and the applicant:

(1) Is at least twenty-one years of age, a citizen of the United States and has resided in this state for at least six months;

(2) Has not pled guilty to or been convicted of a crime punishable by imprisonment for a term exceeding one year under the laws of any state or of the United States other than a crime classified as a misdemeanor under the laws of any state and punishable by a term of imprisonment of two years or less that does not involve an explosive weapon, firearm, firearm silencer or gas gun;

(3) Is not a fugitive from justice or currently charged in an information or indictment with the commission of a crime punishable by imprisonment for a term exceeding one year under the laws of any state or of the United States other than a crime classified as a misdemeanor under the laws of any state and punishable by a term of imprisonment of two years or less that does not involve an explosive weapon, firearm, firearm silencer or gas gun;

(4) Has not been discharged under dishonorable conditions from the United States armed forces;

(5) Is not publicly known to be habitually in an intoxicated or drugged condition; and

(6) Is not currently adjudged mentally incompetent and has not been committed to a mental health facility, as defined in section 632.005, RSMo, or a similar institution located in another state.

2. Applications shall be made to the sheriff of the county in which the applicant resides. An application shall be filed in writing, signed and verified by the applicant, and shall state only the following: the name, social security number, occupation, age, height, color of eyes and hair, residence and business addresses of the applicant, the reason for desiring the permit, and whether the applicant complies with each of the requirements specified in subsection 1 of this section.

3. Before a permit is issued, the sheriff shall make only such inquiries as **[he] the sheriff** deems necessary into the accuracy of the statements made in the application. The sheriff may require that the applicant display a Missouri operator's license or other suitable identification. The sheriff shall issue the permit within a period not to exceed seven days after submission of the properly completed application excluding Saturdays, Sundays or legal holidays. The sheriff may refuse to issue the permit if **[he] the sheriff** determines that any of the requirements specified in subsection 1 of this section have not been met, or if **[he] the sheriff** has reason to believe that the applicant has rendered a false statement regarding any of the provisions in subsection 1 of this section. If the application is approved, the sheriff shall issue a permit and a copy thereof to the applicant.

4. The permit shall recite the date of issuance, that it is invalid after thirty days, the name and address of the person to whom granted, the nature of the transaction, and a physical description of the applicant. The applicant shall sign the permit in the presence of the sheriff.

5. If the permit is used, the person who receives the permit from the applicant shall return it to the sheriff within thirty days after its expiration, with a notation thereon showing the date and manner of disposition of the firearm and a description of the firearm including the make, model and serial number. The sheriff shall keep a record of all applications for permits, **[his] the** action thereon, and shall preserve all returned permits.

6. No person shall in any manner transfer, alter or change a permit, or make a false notation thereon, or obtain a permit upon any false representation, or use, or attempt to use a permit issued to another.

7. For the processing of the permit, the sheriff in each county and the city of St. Louis shall charge a fee not to exceed ten dollars which shall be paid into the treasury of the county or city to the credit of the general revenue fund.

8. In any case when the sheriff refuses to issue or to act on an application for a permit, such refusal shall be in writing setting forth the reasons for such refusal. Such written refusal shall explain the denied applicant's right to appeal and, with a copy of the completed application, shall be given to the denied applicant within a period not to exceed seven days after submission

of the properly completed application excluding Saturdays, Sundays or legal holidays. The denied applicant shall have the right to appeal the denial within ten days of receiving written notice of the denial. Such appeals shall be heard in small claims court as defined in section 482.300, RSMo, and the provisions of sections 482.300, 482.310 and 482.335, RSMo, shall apply to such appeals.

9. A denial of or refusal to act on an application for permit may be appealed by filing with the clerk of the small claims court a copy of the sheriff's written refusal and a form substantially similar to the appeal form provided in this section. Appeal forms shall be provided by the clerk of the small claims **division of the circuit** court free of charge to any person:

SMALL CLAIMS [COURT] DIVISION

In the Circuit Court of Missouri

Case Number

....., Denied Applicant)

vs.)

....., Sheriff)

Return Date

DENIAL OF PERMIT APPEAL

The denied applicant states that [his] **the applicant's** properly completed application for a permit to acquire a firearm with a barrel of less than sixteen inches was denied by the sheriff of County, Missouri, without just cause. The denied applicant affirms that all of the statements in the application are true.

.....

Denied Applicant

10. The notice of appeal in a denial of permit appeal shall be made to the sheriff in a manner and form determined by the small claims court judge.

11. If at the hearing the person shows [he is entitled] **entitlement** to the requested permit, the court shall issue an appropriate order to cause the issuance of the permit. Costs shall not be assessed against the sheriff in any case.

12. Any person aggrieved by any final judgment rendered by a small claims **division of a circuit** court in a denial of permit appeal may have a trial de novo as provided in [sections 512.180 to 512.320] **section 482.365**, RSMo.

13. Violation of any provision of this section is a class A misdemeanor.

571.091. The provisions of sections 138.430, 196.790, 426.220, 426.230, 429.360, 479.500, 512.180, 534.350, 534.360, 534.380, 535.030, 535.110, 541.020, 571.090 and 571.091 of this act shall be applicable to cases filed on and subsequent to January 1, 1999. Any case filed on or prior to December 31, 1998, shall be governed by the practice and

procedure relative to trials de novo in effect on December 31, 1998.

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Unofficial

Bill

Copy