

LEGISLATIVE BILL 458

Approved by the Governor May 8, 1993

Introduced by Landis, 46; Lindsay, 9

AN ACT relating to enforcement of judgments; to amend sections 25-1516, 25-1543, 25-1552, and 43-1729, Reissue Revised Statutes of Nebraska, 1943; to adopt the Nebraska Uniform Enforcement of Foreign Judgments Act; to repeal the Uniform Enforcement of Foreign Judgments Act; to eliminate and change provisions relating to writs of execution and exemptions from execution; to harmonize provisions; to provide an operative date; and to repeal the original sections, and also sections 25-1553, 25-1554, and 25-1587 to 25-15,104, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. Sections 1 to 9 of this act shall be known and may be cited as the Nebraska Uniform Enforcement of Foreign Judgments Act.

Sec. 2. For purposes of the Nebraska Uniform Enforcement of Foreign Judgments Act, foreign judgment means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

Sec. 3. A copy of any foreign judgment authenticated in accordance with the act of Congress or the statutes of this state may be filed on or after the operative date of this act in the office of the clerk of any court of this state having jurisdiction of such action. The clerk shall treat the foreign judgment in the same manner as a judgment of a court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a court of this state and may be enforced or satisfied in like manner.

Sec. 4. (a) At the time of the filing of the foreign judgment, the judgment creditor or his or her lawyer shall make and file with the clerk of the court an affidavit setting forth the name and last-known post office address of the judgment debtor and the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall

not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

Sec. 5. (a) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(b) If the judgment debtor shows the court any ground upon which enforcement of a judgment of any court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period upon requiring the same security for satisfaction of the judgment which is required in this state.

Sec. 6. Any person filing a foreign judgment shall pay to the clerk of the court a fee as provided for judgments of the courts of this state. Fees for docketing, transcription, or other enforcement proceedings shall be as provided for judgments of the courts of this state.

Sec. 7. The right of a judgment creditor to bring an action to enforce his or her judgment instead of proceeding under the Nebraska Uniform Enforcement of Foreign Judgments Act remains unimpaired.

Sec. 8. The Nebraska Uniform Enforcement of Foreign Judgments Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Sec. 9. Sections 1 to 8 of this act do not apply to foreign judgments registered prior to the operative date of this act pursuant to sections 25-1587 to 25-15,104 as such sections existed immediately prior to such date. Sections 25-1587 to 25-15,104 shall remain effective on and after the operative date of this act only for the purpose of enforcement of foreign judgments registered prior to such date pursuant to sections 25-1587 to 25-15,104 as such sections existed immediately prior to such date.

Sec. 10. That section 25-1516, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1516. (1) The writ of execution against the property of the judgment debtor; issuing from any court of record in this state; shall command the officer to whom it is directed; that of the goods and chattels of the debtor he or she cause to be made the money specified in the writ, and for want of goods and chattels he or she cause the same to be made of the lands and tenements of the debtor. ~~The~~ ~~and the~~ exact amount of the debt, damages, and costs; for which the judgment is entered shall be endorsed on the execution.

(2) The writ of execution and a notice of exemptions form shall be issued by the clerk and served upon the debtor by the officer to whom the writ of execution is directed in the manner provided for service of process in civil cases, except that service by certified mail shall not be permitted unless the debtor is a nonresident of the State of Nebraska, in which event service shall be made by any method provided by law for

service of process in civil cases.

(3) The State Court Administrator shall adopt and promulgate rules and regulations which specify uniform writs of execution and notice of exemptions forms for use in all courts in this state. The forms shall include the writ of execution and a notice of exemptions form.

(4) The notice of exemptions form shall include the following information:

(a) The caption of the lawsuit and the mailing address of the clerk of the court issuing the writ of execution; and

(b) The following notice to the debtor, in substantially the form below, which shall be printed in all capital letters immediately below the caption of the lawsuit and the address of the clerk of the court issuing the writ of execution:

NOTICE TO THE DEBTOR

YOU ARE HEREBY NOTIFIED THAT THIS COURT ISSUED A WRIT OF EXECUTION IN THIS CASE DIRECTING THAT SOME OF YOUR PROPERTY BE SOLD ACCORDING TO LAW AND THE PROCEEDS OF THE SALE BE DELIVERED TO THE CLERK OF THIS COURT TO BE USED TO SATISFY PART OR ALL OF YOUR DEBT TO THE CREDITOR. THE LAW OF NEBRASKA AND THE LAW OF THE UNITED STATES PROVIDES THAT CERTAIN PROPERTY CANNOT BE TAKEN FROM YOU AND SOLD TO PAY A DEBT. THE KINDS OF PROPERTY THAT CANNOT BE TAKEN FROM YOU AND THE PROCEDURE FOR CLAIMING THE EXEMPTION ARE SET FORTH BELOW.

THE LAW EXEMPTS FROM EXECUTION YOUR INTEREST IN OR RIGHT TO PROPERTY SET OUT IN LAW AS FOLLOWS: (THE NOTICE SHALL INCLUDE A SCHEDULE OF EXEMPTIONS AND MUST INCLUDE THOSE EXEMPTIONS LISTED IN SECTIONS 25-1552, 25-1556, 25-1559, 25-1563.01, 25-1563.02, 40-101, 44-371, AND 44-1089).

IF YOU BELIEVE THAT SOME OF YOUR PROPERTY IS EXEMPT FROM EXECUTION YOU MAY REQUEST A HEARING BY CHECKING THE BOX ON THIS FORM AND MAILING OR DELIVERING THIS FORM TO THE OFFICE OF THE CLERK OF THIS COURT SET FORTH ABOVE. YOU MAY ALSO HAVE TO PROVIDE A LIST OF YOUR PROPERTY AND THE VALUE OF YOUR PROPERTY AT THE TIME YOU MAIL OR DELIVER YOUR REQUEST FOR HEARING. FAILURE TO CLAIM THE EXEMPTION WITHIN TWENTY DAYS OF THE DATE YOU RECEIVE THIS NOTICE MAY MEAN THAT THE PROPERTY

SEIZED WILL BE SOLD AND THE PROCEEDS APPLIED TO YOUR DEBT.

IF YOU REQUEST A HEARING THE HEARING WILL BE CONDUCTED NO LATER THAN TEN DAYS AFTER THE COURT RECEIVES YOUR REQUEST, UNLESS YOU REQUEST AN EARLIER HEARING DATE DUE TO AN EMERGENCY, IN WHICH CASE THE COURT SHALL SCHEDULE THE HEARING AS SOON AS PRACTICABLE.

IF YOU WANT LEGAL REPRESENTATION YOU SHOULD CONTACT YOUR LAWYER IMMEDIATELY. IF YOU NEED THE NAME OF A LAWYER, CONTACT THE LOCAL BAR ASSOCIATION OR YOUR LOCAL LEGAL AID OR LEGAL SERVICES OFFICE.

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REQUEST FOR HEARING

I believe that some of my seized property may be exempt from execution in this matter and request that a hearing be held no later than ten days after the delivery of this request to the court.

.....
Debtor

.....
Address

.....
Telephone Number

.....
Signature

(5) The debtor desiring to claim an exemption from execution shall file a request for hearing.

(6) The clerk of the court which issued the writ of execution shall provide notice of the filing of the request for hearing and the date and time of any hearing to the person holding the writ and to all parties. There shall be a hearing held within ten days of the filing of the request for hearing unless the need for hearing is an emergency, in which case the court shall schedule the hearing as soon as practicable after the request is made. The hearing may be by conference telephone call if permitted by the court.

(7) At the hearing, the court shall determine the debtor's entitlement to the claimed exemption, whether the amount is owed on the judgment, and the value of the property claimed to be exempt and shall issue an exemption order after the hearing ordering the officer to sell the nonexempt property according to law and return the exempt property to the debtor immediately.

(8) If any of the personal property claimed to be exempt from execution by the debtor is a motor vehicle as defined in section 134, Legislative Bill 370, Ninety-third Legislature, First Session, 1993, the cash

value of such motor vehicle for purposes of the exemption may be determined by reference to a source of relevant fact commonly used in the motor vehicle industry to determine such value.

Sec. 11. That section 25-1543, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1543. The sheriff or other officer; to whom any writ of execution ~~shall be~~ is directed; shall return such writ to the court to which the ~~same writ~~ writ is returnable, ~~within sixty days from the date thereof~~ as soon as practicable after the writ has been served.

Sec. 12. That section 25-1552, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1552. All ~~persons~~ debtors who ~~do not~~ do not have ~~neither~~ neither lands, town lots, or houses subject to exemptions as a homestead; ~~under the laws of this state, sections 40-101 to 40-116~~ shall have exempt from forced sale on execution the sum of twenty-five hundred dollars in personal property, except wages. The provisions of this section shall not, in any manner, apply to the exemption of wages, that subject being fully provided for by section 25-1558. In proceedings involving a writ of execution, the exemption from execution under this section shall be claimed in the manner provided by section 25-1516. The debtor desiring to claim an exemption from execution under this section shall, at the time the request for hearing is filed, file a list of the whole of the property owned by the debtor and an indication of the items of property which he or she claims to be exempt from execution, along with a value for each item listed. The debtor or his or her authorized agent may select from the list an amount of property not exceeding the value exempt from execution under this section according to the debtor's valuation or the court's valuation if the debtor's valuation is challenged by a creditor.

Sec. 13. That section 43-1729, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-1729. Upon receiving a foreign support order and the documentation specified in section 43-1730 from an agency of another jurisdiction, an obligee, an obligor, or an attorney for either, the department shall transmit such order and documents to be filed with the clerk of the district court in the jurisdiction within this state in which income withholding is being sought. The clerk of the district court shall accept the documents filed, and such acceptance shall constitute entry of the foreign support order for purposes of income withholding.

The filing process required by this section shall not be construed as requiring an application, petition, answer, and hearing as might be required for the filing or registration of foreign judgments by the Nebraska Uniform Enforcement of Foreign Judgments Act or the Revised Uniform Reciprocal Enforcement of Support Act. The purpose of this section is to enable the clerk of the district court to receive, account for, and distribute collections generated by income withholding.

Sec. 14. This act shall become operative on January 1, 1994.

Sec. 15. That original sections 25-1516, 25-1543, 25-1552,

and 43-1729, Reissue Revised Statutes of Nebraska, 1943, and also sections 25-1553, 25-1554, and 25-1587 to 25-15,104, Reissue Revised Statutes of Nebraska, 1943, are repealed.