

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1115**

Introduced by Bourne, 8

Read first time January 17, 2006

Committee: Judiciary

A BILL

1 FOR AN ACT relating to civil procedure; to amend sections 25-214,  
2 25-302, 25-307, 25-308, 25-316, 25-322, 25-325, 25-326,  
3 and 25-329, Reissue Revised Statutes of Nebraska; to  
4 change provisions relating to civil actions; and to  
5 repeal the original sections.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 25-214, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           25-214 If~~7~~ ~~when~~ a cause of action accrues against a  
4 person~~7~~ while he or she is out of the state~~7~~ or shall have or has  
5 absconded or concealed himself~~7~~ or herself, the period limited for  
6 the commencement of the action shall not begin to run (1) until he  
7 or she comes into the state~~7~~ or (2) while he or she is absconded  
8 or concealed. If the person~~7~~ and if~~7~~ after the cause of action  
9 accrues~~7~~ he departs from the state~~7~~ or absconds or conceals himself  
10 or herself after the cause of action accrues, the time of his or  
11 her absence or concealment shall not be computed as any part of the  
12 period within which the action must be brought.

13           Sec. 2. Section 25-302, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           25-302 The assignee of a thing in action may maintain an  
16 action thereon in ~~his~~ the assignee's own name and behalf, without  
17 the name of the assignor.

18           Sec. 3. Section 25-307, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20           25-307 Except as provided by the Nebraska Probate Code,  
21 the action of an infant shall be commenced, maintained, and  
22 prosecuted by his or her guardian or next friend. Such actions  
23 may be dismissed with or without prejudice by the guardian or  
24 next friend only with approval of the court. When the action is  
25 commenced by his or her next friend, the court has power to dismiss

1 it, if it is not for the benefit of the infant, ~~or~~ or to substitute  
2 the guardian of the infant, or any person, as the next friend. Any  
3 action taken pursuant to this section shall be binding upon the  
4 infant.

5           Sec. 4. Section 25-308, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           25-308 The guardian, conservator, or next friend is  
8 liable for the costs of the action brought by ~~him~~ the guardian,  
9 conservator, or next friend, and ~~when he or she is insolvent,~~ the  
10 court may require security for ~~them~~ the costs of the action. The  
11 guardian, conservator, or next friend may be a witness in an action  
12 brought by ~~him~~ the guardian, conservator, or next friend.

13           Sec. 5. Section 25-316, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           25-316 If the plaintiff, in any judgment so rendered  
16 against any company or partnership, ~~shall seek~~ seeks to charge  
17 the individual property of the persons composing such company or  
18 firm, it shall be lawful for ~~him~~ the plaintiff to file a bill in  
19 equity against the several members thereof, setting forth his or  
20 her judgment and the insufficiency of the partnership property to  
21 satisfy the same, and to have a decree for the debt ~~and~~ and an award  
22 of execution against all such persons ~~and~~ or any of them as may appear  
23 to have been members of such company, association, or or firm.

24           Sec. 6. Section 25-322, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1           25-322 An action does not abate by the death or other  
2 disability of a party, or by the transfer of any interest therein  
3 during its pendency, if the cause of action ~~survive or continue~~  
4 survives or continues. In the case of the death or other disability  
5 of a party, the court may allow the action to continue by or  
6 against his or her representative or successor in interest. In case  
7 of any other transfer of interest, the action may be continued in  
8 the name of the original party, or the court may allow the person  
9 to whom the transfer is made to be substituted in the action.

10           Sec. 7. Section 25-325, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12           25-325 Upon the affidavit of a defendant, before answer  
13 in an action upon contract or for the recovery of personal  
14 property, that some third party, without collusion with ~~him~~ the  
15 defendant, has or makes a claim to the subject of the action,  
16 and that ~~he~~ the defendant is ready to pay or dispose of the same  
17 as the court may direct, the court may make an order for the  
18 safekeeping, or for the payment, or deposit in court, or delivery  
19 of the subject of the action, to such person as it may direct, and  
20 an order requiring such third party to appear in a reasonable time  
21 and maintain or relinquish his or her claim against the defendant.  
22 If such third party, being served with a copy of the order by the  
23 sheriff or such other person as the court may direct, ~~fail~~ fails to  
24 appear, the court may declare ~~him~~ such third party barred of all  
25 claim in respect to the subject of the action against the defendant

1 therein. If such third party ~~appear~~ appears, he or she shall be  
2 allowed to make himself or herself the defendant in the action in  
3 lieu of the original defendant, who shall be discharged from all  
4 liability to either of the other parties in respect to the subject  
5 of the action, upon ~~his~~ compliance by the defendant with the order  
6 of the court for the payment, deposit, or delivery thereof.

7           Sec. 8. Section 25-326, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           25-326 The provisions of section 25-325 shall be  
10 applicable to an action brought against a sheriff, or other  
11 officer, for the recovery of personal property taken by him or her  
12 under execution, or for the proceeds of such property so taken and  
13 sold by him or her. The defendant in such action shall be entitled  
14 to the benefit of those provisions against the party in whose favor  
15 the execution issued, upon exhibiting to the court the process  
16 under which ~~he~~ the defendant acted, with his or her affidavit that  
17 the property, ~~for the recovery of which,~~ or its proceeds, ~~the~~  
18 ~~action is brought,~~ was taken under such process.

19           Sec. 9. Section 25-329, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           25-329 The court shall determine upon the intervention at  
22 the same time that the action is decided, and if the claim of the  
23 intervenor is not sustained, the intervenor ~~he~~ shall pay all costs  
24 of the intervention.

25           Sec. 10. Original sections 25-214, 25-302, 25-307,

LB 1115

LB 1115

- 1 25-308, 25-316, 25-322, 25-325, 25-326, and 25-329, Reissue Revised
- 2 Statutes of Nebraska, are repealed.