

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 832

Introduced by Lathrop, 12.

Read first time January 10, 2008

Committee: Judiciary

A BILL

1 FOR AN ACT relating to civil procedure; to amend section 43-1729,
2 Reissue Revised Statutes of Nebraska, and section
3 42-371, Revised Statutes Supplement, 2007; to adopt the
4 Uniform Foreign-Country Money Judgments Recognition Act;
5 to harmonize provisions; and to repeal the original
6 sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 12 of this act shall be known
2 and may be cited as the Uniform Foreign-Country Money Judgments
3 Recognition Act.

4 Sec. 2. In the Uniform Foreign-Country Money Judgments
5 Recognition Act:

6 (1) Foreign country means a government other than:

7 (a) the United States;

8 (b) a state, district, commonwealth, territory, or
9 insular possession of the United States; or

10 (c) any other government with regard to which the
11 decision in this state as to whether to recognize a judgment
12 of that government's courts is initially subject to determination
13 under the Full Faith and Credit Clause of the United States
14 Constitution.

15 (2) Foreign-country judgment means a judgment of a court
16 of a foreign country.

17 Sec. 3. (1) Except as otherwise provided in subsection
18 (2) of this section, the Uniform Foreign-Country Money Judgments
19 Recognition Act applies to a foreign-country judgment to the extent
20 that the judgment:

21 (a) grants or denies recovery of a sum of money; and

22 (b) under the law of the foreign country where rendered,
23 is final, conclusive, and enforceable.

24 (2) The act does not apply to a foreign-country judgment,
25 even if the judgment grants or denies recovery of a sum of money,

1 to the extent that the judgment is:

2 (a) a judgment for taxes;

3 (b) a fine or other penalty; or

4 (c) a judgment for divorce, support, maintenance, or
5 other judgment rendered in connection with domestic relations.

6 (3) A party seeking recognition of a foreign-country
7 judgment has the burden of establishing that the act applies to the
8 foreign-country judgment.

9 Sec. 4. (1) Except as otherwise provided in subsections
10 (2) and (3) of this section, a court of this state shall recognize
11 a foreign-country judgment to which the Uniform Foreign-Country
12 Money Judgments Recognition Act applies.

13 (2) A court of this state may not recognize a
14 foreign-country judgment if:

15 (a) the judgment was rendered under a judicial system
16 that does not provide impartial tribunals or procedures compatible
17 with the requirements of due process of law;

18 (b) the foreign court did not have personal jurisdiction
19 over the defendant; or

20 (c) the foreign court did not have jurisdiction over the
21 subject matter.

22 (3) A court of this state need not recognize a
23 foreign-country judgment if:

24 (a) the defendant in the proceeding in the foreign court
25 did not receive notice of the proceeding in sufficient time to

1 enable the defendant to defend;

2 (b) the judgment was obtained by fraud that deprived the
3 losing party of an adequate opportunity to present its case;

4 (c) the judgment or the cause of action on which the
5 judgment is based is repugnant to the public policy of this state
6 or of the United States;

7 (d) the judgment conflicts with another final and
8 conclusive judgment;

9 (e) the proceeding in the foreign court was contrary
10 to an agreement between the parties under which the dispute in
11 question was to be determined otherwise than by proceedings in that
12 foreign court;

13 (f) in the case of jurisdiction based only on personal
14 service, the foreign court was a seriously inconvenient forum for
15 the trial of the action;

16 (g) the judgment was rendered in circumstances that raise
17 substantial doubt about the integrity of the rendering court with
18 respect to the judgment; or

19 (h) the specific proceeding in the foreign court leading
20 to the judgment was not compatible with the requirements of due
21 process of law.

22 (4) A party resisting recognition of a foreign-country
23 judgment has the burden of establishing that a ground for
24 nonrecognition stated in subsection (2) or (3) of this section
25 exists.

1 Sec. 5. (1) A foreign-country judgment may not be refused
2 recognition for lack of personal jurisdiction if:

3 (a) the defendant was served with process personally in
4 the foreign country;

5 (b) the defendant voluntarily appeared in the proceeding,
6 other than for the purpose of protecting property seized or
7 threatened with seizure in the proceeding or of contesting the
8 jurisdiction of the court over the defendant;

9 (c) the defendant, before the commencement of the
10 proceeding, had agreed to submit to the jurisdiction of the foreign
11 court with respect to the subject matter involved;

12 (d) the defendant was domiciled in the foreign country
13 when the proceeding was instituted or was a corporation or other
14 form of business organization that had its principal place of
15 business in, or was organized under the laws of, the foreign
16 country;

17 (e) the defendant had a business office in the foreign
18 country and the proceeding in the foreign court involved a cause of
19 action arising out of business done by the defendant through that
20 office in the foreign country; or

21 (f) the defendant operated a motor vehicle or airplane in
22 the foreign country and the proceeding involved a cause of action
23 arising out of that operation.

24 (2) The list of bases for personal jurisdiction in
25 subsection (1) of this section is not exclusive. The courts of this

1 state may recognize bases of personal jurisdiction other than those
2 listed in subsection (1) of this section as sufficient to support a
3 foreign-country judgment.

4 Sec. 6. (1) If recognition of a foreign-country judgment
5 is sought as an original matter, the issue of recognition
6 shall be raised by filing an action seeking recognition of the
7 foreign-country judgment.

8 (2) If recognition of a foreign-country judgment is
9 sought in a pending action, the issue of recognition may be raised
10 by counterclaim, cross-claim, or affirmative defense.

11 Sec. 7. If the court in a proceeding under section 6
12 of this act finds that the foreign-country judgment is entitled
13 to recognition under the Uniform Foreign-Country Money Judgments
14 Recognition Act, then, to the extent that the foreign-country
15 judgment grants or denies recovery of a sum of money, the
16 foreign-country judgment is:

17 (1) conclusive between the parties to the same extent as
18 the judgment of a sister state entitled to full faith and credit in
19 this state would be conclusive; and

20 (2) enforceable in the same manner and to the same extent
21 as a judgment rendered in this state.

22 Sec. 8. If a party establishes that an appeal from a
23 foreign-country judgment is pending or will be taken, the court may
24 stay any proceedings with regard to the foreign-country judgment
25 until the appeal is concluded, the time for appeal expires, or the

1 appellant has had sufficient time to prosecute the appeal and has
2 failed to do so.

3 Sec. 9. An action to recognize a foreign-country judgment
4 must be commenced within the earlier of the time during which
5 the foreign-country judgment is effective in the foreign country
6 or fifteen years from the date that the foreign-country judgment
7 became effective in the foreign country.

8 Sec. 10. In applying and construing this uniform act,
9 consideration must be given to the need to promote uniformity of
10 the law with respect to its subject matter among states that enact
11 it.

12 Sec. 11. The Uniform Foreign-Country Money Judgments
13 Recognition Act does not prevent the recognition under principles
14 of comity or otherwise of a foreign-country judgment not within the
15 scope of the act.

16 Sec. 12. The Uniform Foreign-Country Money Judgments
17 Recognition Act applies to all actions commenced on or after the
18 effective date of this act in which the issue of recognition of a
19 foreign-country judgment is raised.

20 Sec. 13. Section 42-371, Revised Statutes Supplement,
21 2007, is amended to read:

22 42-371 Under the Uniform Interstate Family Support Act
23 and sections 42-347 to 42-381, 43-290, 43-512 to 43-512.10, and
24 43-1401 to 43-1418:

25 (1) All judgments and orders for payment of money shall

1 be liens, as in other actions, upon real property and any personal
2 property registered with any county office and may be enforced or
3 collected by execution and the means authorized for collection of
4 money judgments;

5 (2) (a) If support order payments are current, a partial
6 or total release of the judgment or subordination of a lien
7 for a support order, generally or on specific real or personal
8 property, may be accomplished by filing (i) a current certified
9 copy of support order payment history from the Title IV-D Division
10 explicitly reciting that all support order payments are current and
11 (ii) a partial or total release of the judgment or subordination
12 document in the county office where the lien is registered.

13 (b) If support order payments are not current, the person
14 desiring such release or subordination may file an application
15 for the relief desired in the court which rendered the original
16 judgment or support order. A copy of the application and a
17 notice of hearing shall be served on the judgment creditor either
18 personally or by registered or certified mail no less than ten days
19 before the date of hearing. If the court finds that the release or
20 subordination is not requested for the purpose of avoiding payment
21 and that the release or subordination will not unduly reduce the
22 security, the court may issue an order for a total or partial
23 release of all or specific real or personal property from the lien
24 or issue an order subordinating the lien. As a condition for such
25 release or subordination, the court may require the posting of a

1 bond with the clerk in an amount fixed by the court, guaranteeing
2 payment of the judgment.

3 (c) For purposes of this section, a current certified
4 copy of support order payment history from the Title IV-D Division
5 explicitly reciting that all support payments are current is valid
6 for thirty days after the date of certification;

7 (3) Full faith and credit shall be accorded to a lien
8 arising by operation of law against real and personal property for
9 amounts overdue relating to a support order owed by an obligor
10 who resides or owns property in this state when another state
11 agency, party, or other entity seeking to enforce such lien
12 complies with the procedural rules relating to the filing of the
13 lien in this state. The state agency, party, or other entity
14 seeking to enforce such lien shall send a certified copy of
15 the support order with all modifications, the notice of lien
16 prescribed by 42 U.S.C. 652(a)(11) and 42 U.S.C. 654(9)(E), and
17 the appropriate fee to the clerk of the district court in the
18 jurisdiction within this state in which the lien is sought.
19 Upon receiving the appropriate documents and fee, the clerk of
20 the district court shall accept the documents filed and such
21 acceptance shall constitute entry of the foreign support order for
22 purposes of this section only. Entry of a lien arising in another
23 state pursuant to this section shall result in such lien being
24 afforded the same treatment as liens arising in this state. The
25 filing process required by this section shall not be construed as

1 requiring an application, complaint, answer, and hearing as might
2 be required for the filing or registration of foreign judgments
3 under the Uniform Foreign-Country Money Judgments Recognition Act,
4 the Nebraska Uniform Enforcement of Foreign Judgments Act, or the
5 Uniform Interstate Family Support Act;

6 (4) Support order judgments shall cease to be liens on
7 real or registered personal property ten years from the date (a)
8 the youngest child becomes of age or dies or (b) the most recent
9 execution was issued to collect the judgment, whichever is later,
10 and such lien shall not be reinstated;

11 (5) Alimony and property settlement award judgments, if
12 not covered by subdivision (4) of this section, shall cease to be
13 a lien on real or registered personal property ten years from the
14 date (a) the judgment was entered, (b) the most recent payment
15 was made, or (c) the most recent execution was issued to collect
16 the judgment, whichever is latest, and such lien shall not be
17 reinstated;

18 (6) The court may in any case, upon application or its
19 own motion, after notice and hearing, order a person required to
20 make payments to post sufficient security, bond, or other guarantee
21 with the clerk to insure payment of both current and any delinquent
22 amounts. Upon failure to comply with the order, the court may
23 also appoint a receiver to take charge of the debtor's property
24 to insure payment. Any bond, security, or other guarantee paid in
25 cash may, when the court deems it appropriate, be applied either to

1 current payments or to reduce any accumulated arrearage;

2 (7) (a) The lien of a mortgage or deed of trust which
3 secures a loan, the proceeds of which are used to purchase
4 real property, and (b) any lien given priority pursuant to a
5 subordination document under this section shall attach prior to
6 any lien authorized by this section. Any mortgage or deed of trust
7 which secures the refinancing, renewal, or extension of a real
8 property purchase money mortgage or deed of trust shall have the
9 same lien priority with respect to any lien authorized by this
10 section as the original real property purchase money mortgage or
11 deed of trust to the extent that the amount of the loan refinanced,
12 renewed, or extended does not exceed the amount used to pay the
13 principal and interest on the existing real property purchase money
14 mortgage or deed of trust, plus the costs of the refinancing,
15 renewal, or extension; and

16 (8) Any lien authorized by this section against personal
17 property registered with any county consisting of a motor vehicle
18 or mobile home shall attach upon notation of the lien against the
19 motor vehicle or mobile home certificate of title and shall have
20 its priority established pursuant to the terms of section 60-164 or
21 a subordination document executed under this section.

22 Sec. 14. Section 43-1729, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 43-1729 Upon receiving a foreign support order and the
25 documentation specified in section 43-1730 from an agency of

1 another jurisdiction, an obligee, an obligor, or an attorney for
2 either, the department shall transmit such order and documents to
3 be filed with the clerk of the district court in the jurisdiction
4 within this state in which income withholding is being sought. The
5 clerk of the district court shall accept the documents filed, and
6 such acceptance shall constitute entry of the foreign support order
7 for purposes of income withholding.

8 The filing process required by this section shall not
9 be construed as requiring an application, petition, answer, and
10 hearing as might be required for the filing or registration of
11 foreign judgments by the Uniform Foreign-Country Money Judgments
12 Recognition Act, the Nebraska Uniform Enforcement of Foreign
13 Judgments Act, or the Uniform Interstate Family Support Act.

14 Sec. 15. Original section 43-1729, Reissue Revised
15 Statutes of Nebraska, and section 42-371, Revised Statutes
16 Supplement, 2007, are repealed.