

LEGISLATIVE BILL 489

Approved by the Governor May 7, 2001

Introduced by Brashear, 4

AN ACT relating to law; to amend sections 25-224, 25-1332, 25-1558, 25-1701, 25-1702, 25-1705, 29-2248, 30-2402, and 39-1345.01, Reissue Revised Statutes of Nebraska; to provide for certain discovery subpoenas; to change provisions relating to summary judgment motions, the statute of repose, garnishment of wages, responsibility of highway contractors, the Nebraska District Court Judges Association, and the Nebraska Probate Code; to change and eliminate provisions relating to security for costs; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal sections 25-1703 and 25-1704, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 25-224, Reissue Revised Statutes of Nebraska, is amended to read:

25-224. (1) All product liability actions, except one governed by subsection (5) of this section, shall be commenced within four years next after the date on which the death, injury, or damage complained of occurs.

(2)(a) Notwithstanding subsection (1) of this section or any other statutory provision to the contrary, any product liability action, except one governed by section 2-725, Uniform Commercial Code or by subsection (5) of this section, shall be commenced ~~within ten years after the date when the product which allegedly caused the personal injury, death, or damage was first sold or leased for use or consumption.~~ as follows:

(i) For products manufactured in Nebraska, within ten years after the date the product which allegedly caused the personal injury, death, or damage was first sold or leased for use or consumption; or

(ii) For products manufactured outside Nebraska, within the time allowed by the applicable statute of repose, if any, of the state or country where the product was manufactured, but in no event less than ten years. If the state or country where the product was manufactured does not have an applicable statute of repose, then the only limitation upon the commencement of an action for product liability shall be as set forth in subsection (1) of this section.

(b) If the changes made to this subsection by this legislative bill are declared invalid or unconstitutional, this subsection as it existed prior to the operative date of this section shall be deemed in full force and effect and shall apply to all claims in which a final order has not been entered.

(3) The limitations contained in subsection (1), (2), or (5) of this section shall not be applicable to indemnity or contribution actions brought by a manufacturer or seller of a product against a person who is or may be liable to such manufacturer or seller for all or any portion of any judgment rendered against a manufacturer or seller.

(4) Notwithstanding the provisions of subsections (1) and (2) of this section, any cause of action or claim which any person may have on July 22, 1978, may be brought not later than two years following such date.

(5) Any action to recover damages based on injury allegedly resulting from exposure to asbestos composed of chrysotile, amosite, crocidolite, tremolite, anthrophyllite, actinolite, or any combination thereof, shall be commenced within four years after the injured person has been informed of discovery of the injury by competent medical authority and that such injury was caused by exposure to asbestos as described herein, or within four years after the discovery of facts which would reasonably lead to such discovery, whichever is earlier. No action commenced under this subsection based on the doctrine of strict liability in tort shall be commenced or maintained against any seller of a product which is alleged to contain or possess a defective condition unreasonably dangerous to the buyer, user, or consumer unless such seller is also the manufacturer of such product or the manufacturer of the part thereof claimed to be defective. Nothing in this subsection shall be construed to permit an action to be brought based on an injury described in this subsection discovered more than two years prior to August 30, 1981.

Sec. 2. When the discovery rules promulgated by the Supreme Court authorize discovery from a nonparty without a deposition, a subpoena shall be issued by the clerk of the court before whom the action is pending upon

request of a party. An attorney as an officer of the court may also issue and sign such a subpoena on behalf of a court in which the attorney is authorized to practice. The subpoena shall be served in the time and manner required by the discovery rules. Such discovery rules shall not be construed to permit discovery by subpoena if the information is protected by statute or if that procedure conflicts with any other statute.

Sec. 3. Section 25-1332, Reissue Revised Statutes of Nebraska, is amended to read:

25-1332. The motion shall be served at least ten days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, ~~depositions, and admissions on file, together with the affidavits, if any,~~ and the evidence admitted at the hearing show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. The evidence that may be received on a motion for summary judgment includes depositions, answers to interrogatories, admissions, stipulations, and affidavits. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Sec. 4. Section 25-1558, Reissue Revised Statutes of Nebraska, is amended to read:

25-1558. (1) Except as provided in subsection (2) of this section, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment shall not exceed the lesser of the following amounts:

(a) Twenty-five percent of his or her disposable earnings for that week;

(b) The amount by which his or her disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by 29 U.S.C. 206(a)(1) in effect at the time earnings are payable; or

(c) Fifteen percent of his or her disposable earnings for that week, if the individual is a head of a family.

(2) The restrictions of subsection (1) of this section shall not apply in the case of:

(a) Any order of any court for the support of any persons;

(b) Any order of any court of bankruptcy under Chapter XIII of the Bankruptcy Act; or

(c) Any debt due for any state or federal tax.

(3) No court shall make, execute, or enforce any order or process in violation of this section. The exemptions allowed in this section shall be granted to any person so entitled without any further proceedings.

(4) For the purposes of this section:

(a) Earnings shall mean compensation paid or payable by an employer to an employee for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program;

(b) Disposable earnings shall mean that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld;

(c) Garnishment shall mean any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt; and

(d) Head of a family shall mean an individual who actually supports and maintains one or more individuals who are closely connected with him or her by blood relationship, relationship by marriage, by adoption, or by guardianship, and whose right to exercise family control and provide for the dependent individuals is based upon some moral or legal obligation.

(5) Every assignment, sale, transfer, pledge, or mortgage of the wages or salary of an individual which is exempted by this section, to the extent of the exemption provided by this section, shall be void and unenforceable by any process of law.

(6) No employer shall discharge any employee by reason of the fact that his or her earnings have been subjected to garnishment for any one indebtedness.

(7) In the case of earnings for any pay period other than a week, the Commissioner of Labor shall by regulation prescribe a multiple of the federal minimum hourly wage equivalent in effect to that set forth in this section.

Sec. 5. Section 25-1701, Reissue Revised Statutes of Nebraska, is amended to read:

25-1701. On motion of a party against whom a claim has been asserted in a civil action by a nonresident of this state, after reasonable

notice, and upon finding that security for costs is reasonable and proper, the court may order the opposing party to furnish a surety in an amount determined by the court to be sufficient to cover all costs likely to accrue in the action. A party ordered to furnish a surety may elect to furnish a cash bond in the same amount. In case a surety is furnished, the surety shall be a resident of this state or an incorporated surety company authorized by the laws of this state to transact such business. The surety shall be bound for the payment of all costs which may be adjudged against the party asserting the claim in the court in which the action is brought or heard. In all cases in which the plaintiff is a nonresident of the county in which the action is to be brought, before commencing such action the plaintiff must furnish a sufficient surety for costs, or such plaintiff may at his option furnish a cash bond by depositing with the judge or clerk of the court wherein the action is brought, such sum in cash as shall, at the filing of the suit, be by such judge or clerk, deemed probably sufficient to cover the costs likely to accrue in said action. In case a surety is furnished, the surety must be a resident of the county where the action is to be brought, except where such surety is an incorporated surety company authorized by the laws of this state to transact such business, and must be approved by the clerk. His obligation shall be complete upon endorsement of the summons or signing his name on the complaint as surety for costs. He shall be bound for the payment of all costs which may be adjudged against the plaintiff in the court in which the action is brought or in any other to which it may be carried, and for costs of the plaintiff's witnesses, whether the plaintiff obtained judgment or not.

Sec. 6. Section 25-1702, Reissue Revised Statutes of Nebraska, is amended to read:

25-1702. An action in A claim for which security for costs is required by ordered under section 25-1701, or in which a cash bond has been fixed, and has not been given, shall be dismissed on motion and notice by the defendant at any proper time before judgment, unless in a reasonable time to be allowed by the court such security for costs be is given or a cash bond be is furnished.

Sec. 7. The court may order new or additional security at any time upon notice and on reasonable and proper terms.

Sec. 8. Section 25-1705, Reissue Revised Statutes of Nebraska, is amended to read:

25-1705. After final judgment has been rendered in an action in which security for costs has been given, as required by this chapter, the court, on motion of ~~the defendant, or any other~~ person having a right to such costs, or any part thereof, after ten days' notice of such motion, may enter up judgment in the name of the defendant or his legal representatives, against the surety for costs, his executors or administrators, for the amount of the costs adjudged against the plaintiff, or so much thereof as may be unpaid. Executions may be issued on such judgment, as in other cases, for the use and benefit of the persons entitled to such costs. In the event that a cash bond has been given, the court shall, on motion of ~~the defendant, or any other~~ person having a right to such costs, or any part thereof, after ten days' notice of such motion, enter judgment for the amount of costs adjudged against ~~the plaintiff,~~ or so much thereof as may be unpaid, and shall proceed to pay the same from ~~said the~~ cash bond; and any surplus remaining after such costs have been paid and satisfied, shall be returned to the plaintiff party who posted the cash bond.

Sec. 9. Section 29-2248, Reissue Revised Statutes of Nebraska, is amended to read:

29-2248. The association shall:

(1) Encourage development and implementation of uniform criteria for sentencing criminals;

(2) ~~Convene from time to time for the purpose of holding~~ Participate in planning and presenting institutes and seminars for all judges in this state who sentence criminals or juveniles to discuss problems related to sentencing criminals or juveniles;

(3) ~~Conduct, from time to time,~~ Participate in planning and presenting orientation programs for new judges, such programs to include discussions of sentencing alternatives, procedures, and purposes;

(4) Visit from time to time correctional facilities of this state;

(5) Encourage creation and development of community resources of value to the probation system;

(6) Conduct such other programs of whatever nature of interest to its members; ~~and~~

(7) Exercise all powers and perform all duties necessary and proper to carry out its responsibilities; ~~and~~

(8) Participate in planning and presenting institutes and seminars

for all county employees who work in the judicial branch of government.

Sec. 10. Section 30-2402, Reissue Revised Statutes of Nebraska, is amended to read:

30-2402. Except as provided in ~~section 30-24,125~~ sections 30-24,125 and 30-24,129, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the registrar or an adjudication of probate by the court, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if (1) no court proceeding concerning the succession or administration of the estate has occurred and (2) either the devisee or his or her successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings. Every will, when proved as provided in ~~this code~~ the Nebraska Probate Code, shall have a certificate of such proof endorsed thereon or annexed thereto, signed by the registrar, judge, or clerk magistrate of the county court and attested by the seal of the court. Every will so certified, and the record thereof, or a transcript of such record, certified by the judge or clerk magistrate of the county court and attested by the seal of the court, may be read in evidence in all courts of this state without further proof. An affidavit executed pursuant to section 30-24,129 prior to the operative date of this section is valid and effective to prove such transfer.

Sec. 11. Section 39-1345.01, Reissue Revised Statutes of Nebraska, is amended to read:

39-1345.01. Whenever the Department of Roads, under the authority of section 39-1345, permits the public use of a highway undergoing construction, repair, or maintenance in lieu of a detour route, the contractor shall not be held responsible for damages to those portions of the project upon which the department has permitted public use, when such damages are the result of no proximate act or failure to act on the part of the contractor. ~~7 except in those instances where traffic upon the portion being constructed was contemplated in the specifications.~~

Sec. 12. Sections 4, 12, 13, and 16 of this act become operative on their effective date. The other sections of this act become operative three calendar months after adjournment of this legislative session.

Sec. 13. Original section 25-1558, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 14. Original sections 25-224, 25-1332, 25-1701, 25-1702, 25-1705, 29-2248, 30-2402, and 39-1345.01, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 15. The following sections are outright repealed: Sections 25-1703 and 25-1704, Reissue Revised Statutes of Nebraska.

Sec. 16. Since an emergency exists, this act takes effect when passed and approved according to law.