

LEGISLATIVE BILL 308

Approved by the Governor May 29, 2019

Introduced by Lathrop, 12.

A BILL FOR AN ACT relating to civil procedure; to amend sections 25-217 and 25-516.01, Reissue Revised Statutes of Nebraska; to change provisions relating to commencement of actions, voluntary appearances, and waivers of defenses as prescribed; and to repeal the original sections.

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

Section 1. Section 25-217, Reissue Revised Statutes of Nebraska, is amended to read:

25-217 ~~(1) An action is commenced on the day date the complaint is filed with the court. The action shall stand dismissed without prejudice as to any defendant not served within six months from the date the complaint was filed.~~

(2) Each defendant in the action must be properly served within one hundred eighty days of the commencement of the action. If the action is stayed or enjoined during the one-hundred-eighty-day period, then any defendant who was not properly served before the action was stayed or enjoined must be properly served within ninety days after the stay or injunction is terminated or modified so as to allow the action to proceed.

(3) If any defendant is not properly served within the time specified by subsection (2) of this section then the action against that defendant is dismissed by operation of law. The dismissal is without prejudice and becomes effective on the day after the time for service expires.

Sec. 2. Section 25-516.01, Reissue Revised Statutes of Nebraska, is amended to read:

25-516.01 (1) The voluntary appearance of the party is equivalent to service.

(2) A defense of lack of personal jurisdiction ~~over the person~~, insufficiency of process, or insufficiency of service of process may be asserted only under the procedure provided in the pleading rules adopted by the Supreme Court. If any of those defenses are asserted either by motion or in a responsive pleading and the court overrules the defense, an objection that the court erred in its ruling will be waived and not preserved for appellate review if the party asserting the defense either (a) thereafter files a demand for affirmative relief by way of counterclaim, cross-claim, or third-party claim or (b) fails to dismiss a demand for such affirmative relief that was previously filed. If any of those defenses are asserted either by motion or in a responsive pleading and the court overrules the defense, an objection that the court erred in its ruling on any issue, except an the objection to the court's ruling on personal jurisdiction that the party is not amenable to process issued by a court of this state, will be waived and not preserved for appellate review if the party asserting the defense thereafter participates in proceedings on any issue other than those defenses.

(3) The filing of a suggestion of bankruptcy is not an appearance and does not waive the defense of lack of personal jurisdiction, insufficiency of process, or insufficiency of service of process.

Sec. 3. Original sections 25-217 and 25-516.01, Reissue Revised Statutes of Nebraska, are repealed.