

LEGISLATIVE BILL 1049

Approved by the Governor January 27, 1972

Introduced by William F. Swanson, 27th District

AN ACT to amend sections 25-213, 25-10,109, and 25-1317, Reissue Revised Statutes of Nebraska, 1943, and sections 25-530.02 and 25-530.07, Revised Statutes Supplement, 1969, relating to civil procedure; to harmonize the provisions thereof with previous legislation; to correct internal references; to clarify the provisions thereof; and to repeal the original sections.

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

Section 1. That section 25-213, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-213. Except as provided in sections 76-288 to 76-298, if a person entitled to bring any action mentioned in this ~~Chapter~~ chapter, except for a penalty or forfeiture, or for the recovery of the title or possession of lands, tenements or hereditaments, or for the foreclosure of mortgages thereon, be, at the time the cause of action accrued, within the age of ~~twenty-one~~ twenty years, insane or imprisoned, every such person shall be entitled to bring such action within the respective times limited by this ~~Chapter~~ chapter after such disability shall be removed, and for the recovery of the title or possession of lands, tenements or hereditaments, or for the foreclosure of mortgages thereon, every such person shall be entitled to bring such action within ~~twenty-one~~ twenty years from the accrual thereof, but in no case longer than ten years, after the termination of such disability. Absence from the state, death or other disability shall not operate to extend the period within which actions in rem shall be commenced by and against a nonresident or his representative.

Sec. 2. That section 25-530.02, Revised Statutes Supplement, 1969, be amended to read as follows:

25-530.02. Any of the following systematic or continuous acts in this state, effected by mail or other media, by unauthorized foreign or alien manufacturers and distributors of motor vehicles, motorcycles, or trailers: (1) The issuance or delivery of contracts of sale to dealers of motor vehicles, motorcycles, or trailers of

this state or to corporations authorized to do business therein, (2) the solicitation of applications for such contracts, (3) the collections of money or other considerations for such contracts, (4) the investigation or payments of claims, or (5) any other transaction of business, is equivalent to and shall constitute an appointment by such manufacturer or distributor of the Director of Motor Vehicles and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of a dealer of motor vehicles, motorcycles, or trailers or the Nebraska Motor Vehicle Dealers-License Industry Licensing Board arising out of any such contracts or license, or failure to comply with sections--60-1401--to--60-1419 Chapter 60, article 14, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such manufacturer or distributor.

Sec. 3. That section 25-530.07, Revised Statutes Supplement, 1969, be amended to read as follows:

25-530.07. In any action against an unauthorized foreign or alien manufacturer or distributor of motor vehicles, motorcycles, or trailers upon a contract issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the manufacturer or distributor has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, or to comply with the provisions of sections 60-1401-to-60-1419 Chapter 60, article 14, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed ten per cent of the amount which the court or jury finds the plaintiff is entitled to recover against the manufacturer or distributor, but in no event shall such fee be less than twenty-five dollars. Failure of a manufacturer or distributor to defend any such action shall be deemed prima facie evidence that its failure to make payment or comply with the provisions of sections-60-1401-to-60-1419 Chapter 60, article 14, was vexatious and without reasonable cause.

Sec. 4. That section 25-10,109, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-10,109. No suit shall be instituted on the undertaking given under section 25-1098 before an execution issued on a judgment in favor of the plaintiff or defendant in the action shall have been returned, that sufficient property thereon whereon to levy and make the amount of such judgment cannot be found in the county.

Sec. 5. That section 25-1317, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1317. It shall not be necessary to reserve, in a judgment or order, the right of an infant to show cause against it after his attaining full twenty years of age; but in any case in which, but for this section, such reservation would have been proper, the infant, within one year after arriving at the age of twenty-one twenty years, may show cause against such order or judgment.

Sec. 6. That original sections 25-213, 25-10,109, and 25-1317, Reissue Revised Statutes of Nebraska, 1943, and sections 25-530.02 and 25-530.07, Revised Statutes Supplement, 1969, are repealed.