

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 308

Introduced by Lathrop, 12.

Read first time January 15, 2019

Committee:

- 1 A BILL FOR AN ACT relating to civil procedure; to amend sections 25-217
- 2 and 25-516.01, Reissue Revised Statutes of Nebraska; to change
- 3 provisions relating to commencement of actions, voluntary
- 4 appearances, and waivers of defenses as prescribed; and to repeal
- 5 the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

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

3 25-217 (1) An action is commenced on the day date the complaint is
4 filed with the court. The action shall stand dismissed without prejudice
5 as to any defendant not served within six months from the date the
6 complaint was filed.

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

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

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

21 25-516.01 (1) The voluntary appearance of the party is equivalent to
22 service.

23 (2) A defense of lack of personal jurisdiction over the person,
24 insufficiency of process, or insufficiency of service of process may be
25 asserted only under the procedure provided in the pleading rules adopted
26 by the Supreme Court. If any of those defenses are asserted either by
27 motion or in a responsive pleading and the court overrules the defense,
28 an objection that the court erred in its ruling will be waived and not
29 preserved for appellate review if the party asserting the defense either
30 (a) thereafter files a demand for affirmative relief by way of
31 counterclaim, cross-claim, or third-party claim or (b) fails to dismiss a

1 demand for such affirmative relief that was previously filed. If any of
2 those defenses are asserted either by motion or in a responsive pleading
3 and the court overrules the defense, an objection that the court erred in
4 its ruling on any issue, except an the objection to the court's ruling on
5 personal jurisdiction that the party is not amenable to process issued by
6 a court of this state, will be waived and not preserved for appellate
7 review if the party asserting the defense thereafter participates in
8 proceedings on any issue other than those defenses.

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

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