

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 415

Introduced by Seiler, 33.

Read first time January 22, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to attachment and garnishment; to amend sections
2 25-1010 and 25-1056, Reissue Revised Statutes of
3 Nebraska; to change provisions relating to financial
4 institutions; to provide an operative date; and to repeal
5 the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 25-1010, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 25-1010 (1) When an affidavit is filed in a civil action
4 containing the necessary allegations of an affidavit of attachment
5 and in addition allegations that the affiant has good reason to and
6 does believe that any person, partnership, limited liability company,
7 or corporation to be named and within the county where the action is
8 brought has property of the defendant, describing ~~the same,~~ such
9 property, in his or her possession that cannot be levied upon by
10 attachment, a judge of any district court or county court may direct
11 the clerk to issue a summons and order requiring such person,
12 partnership, limited liability company, or corporation as garnishee
13 to answer written interrogatories, to be furnished by the plaintiff
14 and attached to such summons and order, respecting the matters set
15 forth in section 25-1026. All answers must be given in writing but do
16 not need to be verified or given under oath. All answers so given
17 will be deemed to be true and subject to all of the penalties of
18 perjury in the event of willful falsification.

19 (2) The summons and order referred to in subsection (1)
20 of this section shall be returnable within five days from the date of
21 the issuance thereof and shall require the garnishee to answer within
22 ten days from the date of service upon him or her. The order shall
23 inform the garnishee (a) of the penalties that may be imposed in the
24 event of willful falsification, (b) that he or she is obligated to
25 hold the property of every description and the credits of the

1 defendant in his or her possession or under his or her control at the
2 time of the service of the order and the interrogatories until
3 further direction from the court, (c) of his or her ability to obtain
4 discharge from liability to the defendant under section 25-1027, and
5 (d) of the ability of the court to enter judgment against him or her
6 upon failure to answer the interrogatories as provided in section
7 25-1028. If the answers to the interrogatories identify property of
8 the defendant in the possession of the garnishee, the clerk shall
9 mail to the last-known address of the defendant copies of the
10 garnishment summons and answers to interrogatories within five days
11 after the return of the answers to the interrogatories.

12 (3) Prior to final judgment in an action, no order of
13 garnishment shall issue for wages due from an employer to an
14 employee.

15 (4)(a) In any case involving service of a garnishment
16 summons on a financial institution that operates more than one office
17 or branch where deposits are received within this state, the
18 financial institution may (i) if its main-chartered office is located
19 in this state, designate its main-chartered office for the service of
20 summons or (ii) if its main-chartered office is located in another
21 state, designate any one of its offices or branches in this state for
22 service of summons. The designation of a main-chartered office or an
23 office or branch under this subdivision shall be made by filing a
24 notice of designation with the Department of Banking and Finance,
25 shall contain the physical address of the main-chartered office or

1 the office or branch designated, and shall be effective upon
2 placement on the department web site. The department shall post the
3 list of such designated main-chartered offices and offices or
4 branches on its web site for access by the public. A financial
5 institution may modify or revoke a designation made under this
6 subdivision by filing the modification or revocation with the
7 department. The modification or revocation shall be effective when
8 the department's web site has been updated to reflect the
9 modification or revocation, except that the judgment creditor may
10 rely upon the designation that was modified or revoked during the
11 thirty-day period following the effective date of the revocation or
12 modification provided that the summons is timely served upon the
13 financial institution. The department shall update its web site to
14 reflect a filing by a financial institution pursuant to this
15 subdivision or a modification of revocation filed by a financial
16 institution pursuant to this subdivision within ten business days
17 following the filing by the financial institution. The department web
18 site shall reflect the date its online records for each financial
19 institution have most recently been updated.

20 (b) If a financial institution operating more than one
21 office or branch where deposits are received has designated its main-
22 chartered office or one of its offices or branches for the service of
23 summons, service made on the main-chartered office or the office or
24 branch so designated shall be valid and effective as to any property
25 or credits of the defendant in the possession or control of the main-

1 chartered office of the financial institution in this state and any
2 of the financial institution offices or branches located within this
3 state. If service of summons is not made on the main-chartered office
4 or the office or branch designated by the financial institution, but
5 instead is made at another office or branch of the financial
6 institution located in Nebraska, the financial institution, in its
7 discretion, and without violating any obligation to its customer, may
8 elect to treat the service of summons as valid and effective as to
9 any property or credits of the defendant in the possession or control
10 of the main-chartered office of the financial institution in this
11 state and any of the financial institution offices or branches
12 located within this state. In the absence of such an election, the
13 financial institution may file a statement with the interrogatories
14 that the summons was not served at the financial institution's
15 designated location for receiving service of summons and, therefor,
16 was not processed, and shall provide the address at which the
17 financial institution is to receive service of summons.

18 Sec. 2. Section 25-1056, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 25-1056 (1) In all cases when a judgment has been entered
21 by any court of record and the judgment creditor or his or her agent
22 or attorney has filed an affidavit setting forth the amount due on
23 the judgment, interest, and costs in the office of the clerk of the
24 court where the judgment has been entered and that he or she has good
25 reason to and does believe that any person, partnership, limited

1 liability company, or corporation, naming him, her, or it, has
2 property of and is indebted to the judgment debtor, the clerk shall
3 issue a summons which shall set forth the amount due on the judgment,
4 interest, and costs as shown in the affidavit and require such
5 person, partnership, limited liability company, or corporation, as
6 garnishee, to answer written interrogatories to be furnished by the
7 plaintiff and to be attached to such summons respecting the matters
8 set forth in section 25-1026. The summons shall be returnable within
9 ten days from the date of its issuance and shall require the
10 garnishee to answer within ten days from the date of service upon him
11 or her. Except when wages are involved, the garnishee shall hold the
12 property of every description and the credits of the defendant in his
13 or her possession or under his or her control at the time of the
14 service of the summons and interrogatories until the further order of
15 the court. If the only property in the possession or under the
16 control of the garnishee at the time of the service of the summons
17 and interrogatories is credits of the defendant and the amount of
18 such credits is not in dispute by the garnishee, then such garnishee
19 shall only hold the credits of the defendant in his or her possession
20 or under his or her control at the time of the service of the summons
21 and interrogatories to the extent of the amount of the judgment,
22 interest, and costs set forth in the summons until further order of
23 the court. When wages are involved, the garnishee shall pay to the
24 employee all disposable earnings exempted from garnishment by
25 statute, and any disposable earnings remaining after such payment

1 shall be retained by the garnishee until further order of the court.
2 Thereafter, the service of the summons and interrogatories and all
3 further proceedings shall be in all respects the same as is provided
4 for in sections 25-1011 and 25-1026 to 25-1031.01 unless inconsistent
5 with this section.

6 (2) If it appears from the answer of the garnishee that
7 the judgment debtor was an employee of the garnishee, that the
8 garnishee otherwise owed earnings to the judgment debtor when the
9 garnishment order was served, or that earnings would be owed within
10 sixty days thereafter and there is not a successful written objection
11 to the order or the answer of the garnishee filed, on application by
12 the judgment creditor, the court shall order that the nonexempt
13 earnings, if any, withheld by the garnishee after service of the
14 order be transferred to the court for delivery to the judgment
15 creditor who is entitled to such earnings. Except for garnishments in
16 support of a person, the payments may be made payable to the judgment
17 creditor or assignee and shall be forwarded to the issuing court to
18 record the judgment payment prior to the court delivering the payment
19 to the judgment creditor or assignee. The court shall, upon
20 application of the judgment creditor, further order that the
21 garnishment is a continuing lien against the nonexempt earnings of
22 the judgment debtor. An order of continuing lien on nonexempt
23 earnings entered pursuant to this section shall require the garnishee
24 to continue to withhold the nonexempt earnings of the judgment debtor
25 for as long as the continuing lien remains in effect.

1 Beginning with the pay period during which the writ was
2 served and while the continuing lien remains in effect, the garnishee
3 shall deliver the nonexempt earnings to the court from which the
4 garnishment was issued for each pay period or on a monthly basis if
5 the garnishee so desires and shall deliver to the judgment debtor his
6 or her exempt earnings for each pay period.

7 (3) A continuing lien ordered pursuant to this section
8 shall be invalid and shall have no force and effect upon the
9 occurrence of any of the following:

10 (a) The underlying judgment is satisfied in full or
11 vacated or expires;

12 (b) The judgment debtor leaves the garnishee's employ for
13 more than sixty days;

14 (c) The judgment creditor releases the garnishment;

15 (d) The proceedings are stayed by a court of competent
16 jurisdiction, including the United States Bankruptcy Court;

17 (e) The judgment debtor has not earned any nonexempt
18 earnings for at least sixty days;

19 (f) The court orders that the garnishment be quashed; or

20 (g) Ninety days have expired since service of the writ.

21 The judgment creditor may extend the lien for a second ninety-day
22 period by filing with the court a notice of extension during the
23 fifteen days immediately prior to the expiration of the initial lien,
24 and the continuing lien in favor of the initial judgment creditor
25 shall continue for a second ninety-day period.

1 (4)(a) To determine priority, garnishments and liens
2 shall rank according to time of service.

3 (b) Garnishments, liens, and wage assignments which are
4 not for the support of a person shall be inferior to wage assignments
5 for the support of a person. Garnishments which are not for the
6 support of a person and liens shall be inferior to garnishments for
7 the support of a person.

8 (5) Only one order of continuing lien against earnings
9 due the judgment debtor shall be in effect at one time. If an
10 employee's wages are already being garnished pursuant to a continuing
11 lien at the time of service of a garnishment upon an employer, the
12 answer to garnishment interrogatories shall include such information
13 along with the date of termination of such continuing lien and the
14 title of the case from which such garnishment is issued. Except as
15 provided in subsection (4) of this section, a continuing lien
16 obtained pursuant to this section shall have priority over any
17 subsequent garnishment or wage assignment.

18 (6)(a) In any case involving service of a garnishment
19 summons on a financial institution that operates more than one office
20 or branch where deposits are received within this state, the
21 financial institution may (i) if its main-chartered office is located
22 in this state, designate its main-chartered office for the service of
23 summons or (ii) if its main-chartered office is located in another
24 state, designate any one of its offices or branches in this state for
25 service of summons. The designation of a main-chartered office or an

1 office or branch under this subdivision shall be made by filing a
2 notice of designation with the Department of Banking and Finance,
3 shall contain the physical address of the main-chartered office or
4 the office or branch designated, and shall be effective upon
5 placement on the department web site. The department shall post the
6 list of such designated main-chartered offices and offices or
7 branches on its web site for access by the public. A financial
8 institution may modify or revoke a designation made under this
9 subdivision by filing the modification or revocation with the
10 department. The modification or revocation shall be effective when
11 the department's web site has been updated to reflect the
12 modification or revocation, except that the judgment creditor may
13 rely upon the designation that was modified or revoked during the
14 thirty-day period following the effective date of the revocation or
15 modification provided that the summons is timely served upon the
16 financial institution. The department shall update its web site to
17 reflect a filing by a financial institution pursuant to this
18 subdivision or a modification of revocation filed by a financial
19 institution pursuant to this subdivision within ten business days
20 following the filing by the financial institution. The department web
21 site shall reflect the date its online records for each financial
22 institution have most recently been updated.

23 (b) If a financial institution operating more than one
24 office or branch where deposits are received has designated its main-
25 chartered office or one of its offices or branches for the service of

1 summons, service made on the main-chartered office or the office or
2 branch so designated shall be valid and effective as to any property
3 or credits of the defendant in the possession or control of the main-
4 chartered office of the financial institution in this state and any
5 of the financial institution offices or branches located within this
6 state. If service of summons is not made on the main-chartered office
7 or the office or branch designated by the financial institution, but
8 instead is made at another office or branch of the financial
9 institution located in Nebraska, the financial institution, in its
10 discretion, and without violating any obligation to its customer, may
11 elect to treat the service of summons as valid and effective as to
12 any property or credits of the defendant in the possession or control
13 of the main-chartered office of the financial institution in this
14 state and any of the financial institution offices or branches
15 located within this state. In the absence of such an election, the
16 financial institution may file a statement with the interrogatories
17 that the summons was not served at the financial institution's
18 designated location for receiving service of summons and, therefor,
19 was not processed, and shall provide the address at which the
20 financial institution is to receive service of summons.

21 Sec. 3. This act becomes operative on January 1, 2014.

22 Sec. 4. Original sections 25-1010 and 25-1056, Reissue
23 Revised Statutes of Nebraska, are repealed.