

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 327

Introduced by Williams, 36.

Read first time January 15, 2015

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to civil procedure; to amend sections 25-1010,
- 2 25-1027, 25-1028, 25-1030.02, and 25-1056, Reissue Revised Statutes
- 3 of Nebraska; to change provisions relating to garnishment; and to
- 4 repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

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

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

20 (2) The summons and order referred to in subsection (1) of this
21 section shall be returnable within five days after ~~from~~ the date of the
22 issuance thereof and shall require the garnishee to answer within ten
23 days after ~~from~~ the date of service upon him or her. The order shall
24 inform the garnishee (a) of the penalties that may be imposed in the
25 event of willful falsification, (b) that the garnishee ~~he or she~~ is
26 obligated to hold the property of every description and the credits of
27 the defendant in the garnishee's ~~his or her~~ possession or ~~under his or~~
28 ~~her~~ control at the time of the service of the order and the
29 interrogatories until further direction from the court, subject to the
30 right of the garnishee, if authorized to charge a garnishment fee or
31 similar fee, to collect the fee by deducting the amount of the fee from

1 any property or credits of the defendant, other than wages, in the
2 possession or control of the garnishee prior to remitting such property
3 or credits pursuant to direction from the court, (c) of the garnishee's
4 ~~his or her~~ ability to obtain discharge from liability to the defendant
5 under section 25-1027, and (d) of the ability of the court to enter
6 judgment against the garnishee ~~him or her~~ upon failure to answer the
7 interrogatories as provided in section 25-1028. If the answers to the
8 interrogatories identify property or credits of the defendant in the
9 possession of the garnishee, the clerk shall mail to the last-known
10 address of the defendant copies of the garnishment summons and answers to
11 interrogatories within five days after the return of the answers to the
12 interrogatories.

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

15 Sec. 2. Section 25-1027, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 25-1027 A garnishee may pay the money he or she owes ~~owing~~ to the
18 defendant by him or her into the court less any fees that may be deducted
19 by the garnishee pursuant to section 25-1010 or 25-1056. ~~The garnishee~~ He
20 shall be discharged from liability to the defendant for any money so paid
21 not exceeding the plaintiff's claim. The garnishee ~~He~~ shall not be
22 subjected to costs beyond those caused by the garnishee's ~~his~~ resistance
23 of the claim against such garnishee ~~him~~; ~~and if he disclose the property~~
24 ~~in his hands, or the true amount owing by him, and deliver or pay the~~
25 ~~same according to the order of the court, he shall be allowed his costs.~~

26 Sec. 3. Section 25-1028, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 25-1028 If the garnishee fails to answer, as required by section
29 25-1026, the garnishee ~~he~~ shall be presumed to be indebted to the
30 defendant in the full amount of the claim of plaintiff. Upon notice to
31 the garnishee given within such time and in such manner as the court

1 shall direct, judgment may be entered for such amount as the court may
2 find due from the garnishee.

3 Sec. 4. Section 25-1030.02, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 25-1030.02 The trial of the determination of the liability of the
6 garnishee shall be conducted the same as in a civil action. If it appears
7 ~~shall appear~~ upon the trial of the liability of the garnishee that the
8 garnishee ~~was~~ (1) was indebted to the defendant, or (2) had any property
9 or credits of the defendant in the garnishee's ~~in his~~ possession or
10 ~~under his~~ control at the time of being served with the notice of
11 garnishment, the garnishee ~~he~~ shall be liable to the plaintiff if ~~in~~
12 ~~case~~ judgment is finally recovered by the plaintiff against the
13 defendant, to the full amount thereof, or to the amount of such
14 indebtedness or property held by the garnishee, whichever is less. The
15 plaintiff in such event may have a judgment against the garnishee (a ~~1~~)
16 for the amount of money due from the garnishee to the defendant in the
17 original action, ~~or~~ (b ~~2~~) for the delivery to the sheriff or to the clerk
18 of the court of any property in the garnishee's hands belonging to the
19 defendant in the original action within a time to be fixed by the court,
20 or (c) for the value of such property ~~the same~~ as fixed in the judgment
21 if not delivered within the time fixed.

22 Sec. 5. Section 25-1056, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 25-1056 (1) In all cases in which ~~when~~ a judgment has been entered
25 by any court of record and the judgment creditor or his or her agent or
26 attorney has filed an affidavit setting forth the amount due on the
27 judgment, interest, and costs in the office of the clerk of the court
28 where the judgment has been entered and that the judgment creditor ~~he or~~
29 ~~she~~ has good reason to and does believe that the named any person,
30 partnership, limited liability company, or corporation, ~~naming him, her,~~
31 ~~or it,~~ has property of or ~~and~~ is indebted to the judgment debtor, the

1 clerk shall issue a summons which shall set forth the amount due on the
2 judgment, interest, and costs as shown in the affidavit and require such
3 person, partnership, limited liability company, or corporation, as
4 garnishee, to answer written interrogatories to be furnished by the
5 plaintiff and to be attached to such summons ~~as respecting the matters~~
6 set forth in sections 25-1010 and section 25-1026. The summons shall be
7 returnable within ten days after ~~from~~ the date of its issuance and shall
8 require the garnishee to answer within ten days after ~~from~~ the date of
9 service upon the garnishee ~~him or her~~. Except when wages are involved,
10 the garnishee shall hold the property ~~of every description~~ and the
11 credits of the defendant in the garnishee's ~~his or her~~ possession or
12 ~~under his or her~~ control at the time of the service of the summons and
13 interrogatories until the further order of the court, subject to the
14 right of the garnishee, if authorized to charge a garnishment fee or
15 similar fee, to collect the fee by deducting the amount of the fee from
16 any property or credits, other than wages, of the defendant in the
17 possession or control of the garnishee prior to remitting such property
18 or credits pursuant to direction from the court. If the answers to the
19 interrogatories identify property or credits of the defendant in the
20 possession of the garnishee, the clerk shall mail to the last-known
21 address of the defendant copies of the garnishment summons and answers to
22 interrogatories within five days after the return of the answers to the
23 interrogatories. If the only property in the possession or under the
24 control of the garnishee at the time of the service of the summons and
25 interrogatories is credits of the defendant and the amount of such
26 credits is not in dispute by the garnishee, then such garnishee shall
27 only hold the credits of the defendant in the garnishee's ~~his or her~~
28 possession or ~~under his or her~~ control at the time of the service of the
29 summons and interrogatories to the extent of the amount of the judgment,
30 interest, and costs set forth in the summons until further order of the
31 court. When wages are involved, the garnishee shall pay to the employee

1 all disposable earnings exempted from garnishment by statute, and any
2 disposable earnings remaining after such payment shall be retained by the
3 garnishee until further order of the court. Thereafter, the service of
4 the summons and interrogatories and all further proceedings shall be in
5 all respects the same as is provided for in sections 25-1011 and 25-1026
6 to 25-1031.01 unless inconsistent with this section.

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

26 Beginning with the pay period during which the writ was served and
27 while the continuing lien remains in effect, the garnishee shall deliver
28 the nonexempt earnings to the court from which the garnishment was issued
29 for each pay period or on a monthly basis if the garnishee so desires and
30 shall deliver to the judgment debtor his or her exempt earnings for each
31 pay period.

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

4 (a) The underlying judgment is satisfied in full or vacated or
5 expires;

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

8 (c) The judgment creditor releases the garnishment;

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

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

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

14 (g) Ninety days have expired since service of the writ. The judgment
15 creditor may extend the lien for a second ninety-day period by filing
16 with the court a notice of extension during the fifteen days immediately
17 prior to the expiration of the initial lien, and the continuing lien in
18 favor of the initial judgment creditor shall continue for a second
19 ninety-day period.

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

22 (b) Garnishments, liens, and wage assignments which are not for the
23 support of a person shall be inferior to wage assignments for the support
24 of a person. Garnishments which are not for the support of a person and
25 liens shall be inferior to garnishments for the support of a person.

26 (5) Only one order of continuing lien against earnings due the
27 judgment debtor shall be in effect at one time. If an employee's wages
28 are already being garnished pursuant to a continuing lien at the time of
29 service of a garnishment upon an employer, the answer to garnishment
30 interrogatories shall include such information along with the date of
31 termination of such continuing lien and the title of the case from which

1 such garnishment is issued. Except as provided in subsection (4) of this
2 section, a continuing lien obtained pursuant to this section shall have
3 priority over any subsequent garnishment or wage assignment.

4 Sec. 6. Original sections 25-1010, 25-1027, 25-1028, 25-1030.02,
5 and 25-1056, Reissue Revised Statutes of Nebraska, are repealed.