

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 229

Introduced by Williams, 36; Ebke, 32.

Read first time January 10, 2017

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to civil procedure; to amend sections 25-1010,
- 2 25-1028, 25-1030.02, and 25-1056, Reissue Revised Statutes of
- 3 Nebraska; to change provisions relating to garnishment; to provide
- 4 an operative date; and to 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 ~~(a) to be named~~ has property or
8 credits of and is indebted to the defendant, ~~describing such property,~~ in
9 his or her possession or control that cannot be levied upon by
10 attachment, with a description of such property or credits, and (b) is
11 indebted to the defendant, a judge of any district court or county court
12 may direct the clerk to issue a summons and order requiring such person,
13 partnership, limited liability company, or corporation as garnishee to
14 answer written interrogatories, to be furnished by the plaintiff and
15 attached to such summons and order as ~~, respecting the matters~~ set forth
16 in this section and section 25-1026. All answers must be given in writing
17 but do not need to be verified or given under oath. All answers so given
18 will be deemed to be true and subject to all of the penalties of perjury
19 in the event of willful falsification. A garnishee that is a financial
20 institution shall be paid a fifteen-dollar fee by the plaintiff or his or
21 her agent or attorney at the time of service of a garnishment summons,
22 which fee shall be taxed as part of the costs of the action. Failure to
23 pay the fee renders the garnishment void and the garnishee need not
24 answer the interrogatories or take any other action. A separate fee shall
25 be paid under this section for each defendant if the garnishment summons
26 is issued for more than one defendant. If a financial institution is
27 authorized to charge a garnishment processing fee to its customer, the
28 fee received by the financial institution under this section shall be
29 deducted from the amount of any garnishment processing fee that the
30 financial institution collects from its customer.

31 (2) Except as otherwise provided in this section, the ~~The~~ summons

1 and order referred to in subsection (1) of this section shall be
2 returnable within five days after ~~from~~ the date of the issuance thereof
3 and shall require the garnishee to answer within ten days after ~~from~~ the
4 date of service upon him or her. The order shall inform the garnishee (a)
5 of the penalties that may be imposed in the event of willful
6 falsification, (b) that the garnishee ~~he or she~~ is obligated to hold the
7 property ~~of every description~~ and the credits of the defendant in the
8 garnishee's ~~his or her~~ possession or ~~under his or her~~ control at the time
9 of the service of the order and the interrogatories until further
10 direction from the court, (c) of the garnishee's ~~his or her~~ ability to
11 obtain discharge from liability to the defendant under section 25-1027,
12 and (d) of the ability of the court to enter judgment against the
13 garnishee ~~him or her~~ upon failure to answer the interrogatories as
14 provided in section 25-1028. If the answers to the interrogatories
15 identify property or credits of the defendant in the possession of the
16 garnishee, the clerk shall mail to the last-known address of the
17 defendant copies of the garnishment summons and answers to
18 interrogatories within five days after the return of the answers to the
19 interrogatories.

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

22 (4)(a) In any case involving service of a garnishment summons on a
23 financial institution where deposits are received within this state, the
24 financial institution shall (i) if its main chartered office is located
25 in this state, designate its main chartered office for the service of
26 summons or (ii) if its main chartered office is located in another state,
27 designate any one of its offices or branches or its agent for service of
28 process in this state for service of summons. The designation of a main
29 chartered office or an office or branch or the agent for service of
30 process under this subdivision shall be made by filing a notice of
31 designation with the Department of Banking and Finance, shall contain the

1 physical address of the main chartered office or the office or branch or
2 the agent for service of process designated, and shall be effective upon
3 placement on the department web site. The department shall post the list
4 of such designated main chartered offices and offices or branches or
5 agents for service of process on its web site for access by the public. A
6 financial institution may modify or revoke a designation made under this
7 subdivision by filing the modification or revocation with the department.
8 The modification or revocation shall be effective when the department's
9 web site has been updated to reflect the modification or revocation,
10 except that the judgment creditor may rely upon the designation that was
11 modified or revoked during the thirty-day period following the effective
12 date of the modification or revocation if the summons is timely served
13 upon the financial institution. The department shall update its web site
14 to reflect a filing by a financial institution pursuant to this
15 subdivision or a modification or 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 where deposits are received has
21 designated its main chartered office or one of its offices or branches or
22 its agent for service of process for the service of summons, service made
23 on the main chartered office or the office or branch or the agent for
24 service of process so designated shall be valid and effective as to any
25 property or credits of the defendant in the possession or control of the
26 main chartered office of the financial institution in this state and any
27 of the financial institution offices or branches located within this
28 state. If service of summons is not made on the main chartered office or
29 the office or branch or the agent for service of process designated by
30 the financial institution, but instead is made at another office or
31 branch of the financial institution located in Nebraska, the financial

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

12 (c) For purposes of this subsection, financial institution means a
13 bank, savings bank, building and loan association, savings and loan
14 association, or credit union whether chartered by the United States, the
15 Department of Banking and Finance, or a foreign state agency.

16 (d) The notice of designation, modification, or revocation shall be
17 made by a financial institution on forms prescribed by the department.

18 (e) The Department of Banking and Finance, any employee of the
19 department, or any person acting on behalf of the department shall be
20 immune from civil and criminal liability for any acts or omissions which
21 occur as a result of the requirements of this subsection.

22 Sec. 2. Section 25-1028, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 25-1028 If the garnishee fails to answer, as required by section
25 25-1026, the garnishee he shall be presumed to be indebted to the
26 defendant in the full amount of the claim of plaintiff. Upon notice to
27 the garnishee given within such time and in such manner as the court
28 shall direct, judgment may be entered for such amount as the court may
29 find due from the garnishee.

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

1 25-1030.02 (1) The trial of the determination of the liability of
2 the garnishee shall be conducted the same as in a civil action. If it
3 appears ~~shall appear~~ upon the trial of the liability of the garnishee
4 that the garnishee was (a) ~~(1)~~ indebted to the defendant, (b) ~~or (2)~~ had
5 any property or credits of the defendant, ~~in the garnishee's~~ his
6 possession or ~~under his~~ control at the time of being served with the
7 notice of garnishment, the garnishee ~~he~~ shall be liable to the plaintiff,
8 if in ~~case~~ judgment is finally recovered by plaintiff against the
9 defendant, to the full amount thereof, or to the amount of such
10 indebtedness or property held by the garnishee.

11 (2) The plaintiff in such event may have a judgment against the
12 garnishee (a) ~~(1)~~ for the amount of money due from the garnishee to the
13 defendant in the original action, or (b) ~~(2)~~ for the delivery to the
14 sheriff or to the clerk of the court of any property in the garnishee's
15 hands belonging to the defendant in the original action within a time to
16 be fixed by the court, or (c) for the value of the property ~~same~~ as fixed
17 in the judgment if not delivered within the time fixed.

18 Sec. 4. Section 25-1056, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 25-1056 (1) In all cases when a judgment has been entered by any
21 court of record and the judgment creditor or his or her agent or attorney
22 has filed an affidavit setting forth the amount due on the judgment,
23 interest, and costs in the office of the clerk of the court where the
24 judgment has been entered and that the judgment creditor or his or her
25 agent or attorney ~~he or she~~ has good reason to and does believe that the
26 named ~~any~~ person, partnership, limited liability company, or corporation,
27 ~~naming him, her, or it,~~ has property of or ~~and~~ is indebted to the
28 judgment debtor, the clerk shall issue a summons which shall set forth
29 the amount due on the judgment, interest, and costs as shown in the
30 affidavit and require such person, partnership, limited liability
31 company, or corporation, as garnishee, to answer written interrogatories

1 to be furnished by the plaintiff and to be attached to such summons as
2 ~~respecting the matters~~ set forth in sections 25-1010 and section 25-1026.
3 A garnishee that is a financial institution shall be paid a fifteen-
4 dollar fee by the plaintiff or his or her agent or attorney at the time
5 of service of a garnishment summons, which fee shall be taxed as part of
6 the costs of the action. Failure to pay the fee renders the garnishment
7 void, and the garnishee need not answer the interrogatories or take any
8 other action. A separate fee shall be paid under this section for each
9 defendant if the garnishment summons is issued for more than one
10 defendant. If a financial institution is authorized to charge a
11 garnishment processing fee to its customer, the fee received by the
12 financial institution under this section shall be deducted from the
13 amount of any garnishment processing fee that the financial institution
14 collects from its customer. Except as otherwise provided in this section,
15 the ~~The~~ summons shall be returnable within ten days after ~~from~~ the date
16 of its issuance and shall require the garnishee to answer within ten days
17 after ~~from~~ the date of service upon such garnishee ~~him or her~~. Except
18 when wages are involved, the garnishee shall hold the property ~~of every~~
19 ~~description~~ and the credits of the defendant in the garnishee's ~~his or~~
20 ~~her~~ possession or ~~under his or her~~ control at the time of the service of
21 the summons and interrogatories until the further order of the court. If
22 the only property in the possession or ~~under the~~ control of the garnishee
23 at the time of the service of the summons and interrogatories is credits
24 of the defendant and the amount of such credits is not in dispute by the
25 garnishee, then such garnishee shall only hold the credits of the
26 defendant in the garnishee's ~~his or her~~ possession or ~~under his or her~~
27 control at the time of the service of the summons and interrogatories to
28 the extent of the amount of the judgment, interest, and costs set forth
29 in the summons until further order of the court. When wages are involved,
30 the garnishee shall pay to the employee all disposable earnings exempted
31 from garnishment by statute, and any disposable earnings remaining after

1 such payment shall be retained by the garnishee until further order of
2 the court. Thereafter, the service of the summons and interrogatories and
3 all further proceedings shall be in all respects the same as is provided
4 for in sections 25-1010, 25-1011, and 25-1026 to 25-1031.01 unless
5 inconsistent with this section.

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

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

31 (3) A continuing lien ordered pursuant to this section shall be

1 invalid and shall have no force and effect upon the occurrence of any of
2 the following:

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

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

7 (c) The judgment creditor releases the garnishment;

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

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

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

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

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

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

25 (5) Only one order of continuing lien against earnings due the
26 judgment debtor shall be in effect at one time. If an employee's wages
27 are already being garnished pursuant to a continuing lien at the time of
28 service of a garnishment upon an employer, the answer to garnishment
29 interrogatories shall include such information along with the date of
30 termination of such continuing lien and the title of the case from which
31 such garnishment is issued. Except as provided in subsection (4) of this

1 section, a continuing lien obtained pursuant to this section shall have
2 priority over any subsequent garnishment or wage assignment.

3 (6)(a) In any case involving service of a garnishment summons on a
4 financial institution where deposits are received within this state, the
5 financial institution shall (i) if its main chartered office is located
6 in this state, designate its main chartered office for the service of
7 summons or (ii) if its main chartered office is located in another state,
8 designate any one of its offices or branches or its agent for service of
9 process in this state for service of summons. The designation of a main
10 chartered office or an office or branch or the agent for service of
11 process under this subdivision shall be made by filing a notice of
12 designation with the Department of Banking and Finance, shall contain the
13 physical address of the main chartered office or the office or branch or
14 the agent for service of process designated, and shall be effective upon
15 placement on the department web site. The department shall post the list
16 of such designated main chartered offices and offices or branches or
17 agents for service of process on its web site for access by the public. A
18 financial institution may modify or revoke a designation made under this
19 subdivision by filing the modification or revocation with the department.
20 The modification or revocation shall be effective when the department's
21 web site has been updated to reflect the modification or revocation,
22 except that the judgment creditor may rely upon the designation that was
23 modified or revoked during the thirty-day period following the effective
24 date of the modification or revocation if the summons is timely served
25 upon the financial institution. The department shall update its web site
26 to reflect a filing by a financial institution pursuant to this
27 subdivision or a modification or revocation filed by a financial
28 institution pursuant to this subdivision within ten business days
29 following the filing by the financial institution. The department web
30 site shall reflect the date its online records for each financial
31 institution have most recently been updated.

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

24 (c) For purposes of this subsection, financial institution means a
25 bank, savings bank, building and loan association, savings and loan
26 association, or credit union whether chartered by the United States, the
27 Department of Banking and Finance, or a foreign state agency.

28 (d) The notice of designation, modification, or revocation shall be
29 made by a financial institution on forms prescribed by the department.

30 (e) The Department of Banking and Finance, any employee of the
31 department, or any person acting on behalf of the department shall be

1 immune from civil and criminal liability for any acts or omissions which
2 occur as a result of the requirements of this subsection.

3 Sec. 5. This act becomes operative on January 1, 2018.

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