

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 95

Introduced by DeBoer, 10.

Read first time January 07, 2021

Committee: Judiciary

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

1 Section 1. Section 25-1056, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 25-1056 (1)(a) ~~(1)~~ In all cases when a judgment has been entered by
4 any court of record and the judgment creditor or his or her agent or
5 attorney has filed an affidavit setting forth the amount due on the
6 judgment, interest, and costs in the office of the clerk of the court
7 where the judgment has been entered and that he or she has good reason to
8 and does believe that any person, partnership, limited liability company,
9 or corporation, naming him, her, or it, has property of and is indebted
10 to the judgment debtor, the clerk shall issue a summons which shall set
11 forth the amount due on the judgment, interest, and costs as shown in the
12 affidavit and require such person, partnership, limited liability
13 company, or corporation, as garnishee, to answer written interrogatories
14 to be furnished by the plaintiff and to be attached to such summons
15 respecting the matters set forth in section 25-1026.

16 (b)(i) Except when wages are involved, the ~~The~~ summons shall be
17 returnable within ten days from the date of its issuance and shall
18 require the garnishee to answer within ten days from the date of service
19 upon the garnishee ~~him or her~~.

20 (ii) When wages are involved, the summons shall be returnable within
21 twenty days from the date of its issuance and shall require the garnishee
22 to answer within twenty days from the date of service upon the garnishee.

23 (c) Except when wages are involved, the garnishee shall hold the
24 property of every description and the credits of the defendant in his or
25 her possession or under his or her control at the time of the service of
26 the summons and interrogatories until the further order of the court. If
27 the only property in the possession or under the control of the garnishee
28 at the time of the service of the summons and interrogatories is credits
29 of the defendant and the amount of such credits is not in dispute by the
30 garnishee, then such garnishee shall only hold the credits of the
31 defendant in his or her possession or under his or her control at the

1 time of the service of the summons and interrogatories to the extent of
2 the amount of the judgment, interest, and costs set forth in the summons
3 until further order of the court. When wages are involved, the garnishee
4 shall pay to the employee all disposable earnings exempted from
5 garnishment by statute, and any disposable earnings remaining after such
6 payment shall be retained by the garnishee until further order of the
7 court. Thereafter, the service of the summons and interrogatories and all
8 further proceedings shall be in all respects the same as is provided for
9 in sections 25-1011 and 25-1026 to 25-1031.01 unless inconsistent with
10 this section.

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

30 Beginning with the pay period during which the writ was served and
31 while the continuing lien remains in effect, the garnishee shall deliver

1 the nonexempt earnings to the court from which the garnishment was issued
2 for each pay period or on a monthly basis if the garnishee so desires and
3 shall deliver to the judgment debtor his or her exempt earnings for each
4 pay period.

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

8 (a) The underlying judgment is satisfied in full or vacated or
9 expires;

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

12 (c) The judgment creditor releases the garnishment;

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

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

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

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

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

26 (b) Garnishments, liens, and wage assignments which are not for the
27 support of a person shall be inferior to wage assignments for the support
28 of a person. Garnishments which are not for the support of a person and
29 liens shall be inferior to garnishments for the support of a person.

30 (5) Only one order of continuing lien against earnings due the
31 judgment debtor shall be in effect at one time. If an employee's wages

1 are already being garnished pursuant to a continuing lien at the time of
2 service of a garnishment upon an employer, the answer to garnishment
3 interrogatories shall include such information along with the date of
4 termination of such continuing lien and the title of the case from which
5 such garnishment is issued. Except as provided in subsection (4) of this
6 section, a continuing lien obtained pursuant to this section shall have
7 priority over any subsequent garnishment or wage assignment.

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

1 subdivision or a modification or revocation filed by a financial
2 institution pursuant to this subdivision within ten business days
3 following the filing by the financial institution. The department web
4 site shall reflect the date its online records for each financial
5 institution have most recently been updated.

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

29 (c) For purposes of this subsection, financial institution means a
30 bank, savings bank, building and loan association, savings and loan
31 association, or credit union whether chartered by the United States, the

1 Department of Banking and Finance, or a foreign state agency.

2 (d) The notice of designation, modification, or revocation shall be
3 made by a financial institution on forms prescribed by the Department of
4 Banking and Finance ~~department~~.

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

9 Sec. 2. Original section 25-1056, Reissue Revised Statutes of
10 Nebraska, is repealed.