

AMENDMENTS TO LB327

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 25-1010, Revised Statutes Supplement, 2015, is
4 amended to read:

5 25-1010 (1) When an affidavit is filed in a civil action and
6 contains ~~containing~~ the necessary allegations of an affidavit of
7 attachment and, in addition, contains allegations that the affiant has
8 good reason to and does believe that the named ~~any~~ person, partnership,
9 limited liability company, or corporation (a) to be named has property or
10 credits of and is indebted to the defendant, ~~describing such property,~~ in
11 his or her possession or control that cannot be levied upon by
12 attachment, with a description of such property or credits, and (b) is
13 indebted to the defendant, a judge of any district court or county court
14 may direct the clerk to issue a summons and order requiring such person,
15 partnership, limited liability company, or corporation as garnishee to
16 answer written interrogatories, to be furnished by the plaintiff and
17 attached to such summons and order as ~~, respecting the matters set forth~~
18 in this section and section 25-1026. All answers must be given in writing
19 but do not need to be verified or given under oath. All answers so given
20 will be deemed to be true and subject to all of the penalties of perjury
21 in the event of willful falsification. A garnishee that is a financial
22 institution shall be paid a fifteen-dollar fee by the plaintiff or his or
23 her agent or attorney at the time of service of a garnishment summons
24 which fee shall be taxed as part of the costs of the action. Failure to
25 pay the fee renders the garnishment void and the garnishee need not
26 answer the interrogatories or take any other action. A separate fee shall
27 be paid under this section for each defendant if the garnishment summons

1 is issued for more than one defendant. If a financial institution is
2 authorized to charge a garnishment processing fee to its customer, the
3 fee received by the financial institution under this section shall be
4 deducted from the amount of any garnishment processing fee that the
5 financial institution collects from its customer.

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

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

28 (4)(a) In any case involving service of a garnishment summons on a
29 financial institution where deposits are received within this state, the
30 financial institution shall (i) if its main chartered office is located
31 in this state, designate its main chartered office for the service of

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

26 (b) If a financial institution where deposits are received has
27 designated its main chartered office or one of its offices or branches or
28 its agent for service of process for the service of summons, service made
29 on the main chartered office or the office or branch or the agent for
30 service of process so designated shall be valid and effective as to any
31 property or credits of the defendant in the possession or control of the

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

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

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

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

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

30 25-1028 If the garnishee fails to answer, as required by section
31 25-1026, the garnishee he shall be presumed to be indebted to the

1 defendant in the full amount of the claim of plaintiff. Upon notice to
2 the garnishee given within such time and in such manner as the court
3 shall direct, judgment may be entered for such amount as the court may
4 find due from the garnishee.

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

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

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

24 Sec. 4. Section 25-1056, Revised Statutes Supplement, 2015, is
25 amended to read:

26 25-1056 (1) In all cases when a judgment has been entered by any
27 court of record and the judgment creditor or his or her agent or attorney
28 has filed an affidavit setting forth the amount due on the judgment,
29 interest, and costs in the office of the clerk of the court where the
30 judgment has been entered and that the judgment creditor or his or her
31 agent or attorney ~~he or she~~ has good reason to and does believe that the

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

1 defendant in the garnishee's ~~his or her~~ possession or ~~under his or her~~
2 control at the time of the service of the summons and interrogatories to
3 the extent of the amount of the judgment, interest, and costs set forth
4 in the summons until further order of the court. When wages are involved,
5 the garnishee shall pay to the employee all disposable earnings exempted
6 from garnishment by statute, and any disposable earnings remaining after
7 such payment shall be retained by the garnishee until further order of
8 the court. Thereafter, the service of the summons and interrogatories and
9 all further proceedings shall be in all respects the same as is provided
10 for in sections 25-1010, 25-1011, and 25-1026 to 25-1031.01 unless
11 inconsistent with this section.

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

31 Beginning with the pay period during which the writ was served and

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

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

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

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

13 (c) The judgment creditor releases the garnishment;

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

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

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

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

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

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

31 (5) Only one order of continuing lien against earnings due the

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

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

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

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

30 (c) For purposes of this subsection, financial institution means a
31 bank, savings bank, building and loan association, savings and loan

1 association, or credit union whether chartered by the United States, the
2 Department of Banking and Finance, or a foreign state agency.

3 (d) The notice of designation, modification, or revocation shall be
4 made by a financial institution on forms prescribed by the 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. 5. This act becomes operative on January 1, 2017.

10 Sec. 6. Original sections 25-1028 and 25-1030.02, Reissue Revised
11 Statutes of Nebraska, and sections 25-1010 and 25-1056, Revised Statutes
12 Supplement, 2015, are repealed.