

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 812

Introduced by Harr, 8.

Read first time January 05, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to civil procedure; to amend sections 25-1010,
2 25-1026, 25-1027, 25-1028, 25-1030.02, and 25-1056,
3 Reissue Revised Statutes of Nebraska; to change
4 provisions relating to garnishment; to harmonize
5 provisions; and to repeal 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 and contains~~ the necessary allegations of an affidavit of
5 attachment and, in addition, contains allegations that the affiant
6 has good reason to and does believe that ~~any~~ the named person,
7 partnership, limited liability company, or corporation, ~~to be named~~
8 ~~and within the county where the action is brought~~ has property or
9 credits of the defendant, ~~describing the same,~~ in his or her
10 possession or control and describes such property that cannot be
11 levied upon by attachment, a judge of any district court or county
12 court may direct the clerk to issue a summons and order requiring
13 such person, partnership, limited liability company, or corporation
14 as garnishee to answer written interrogatories, to be furnished by
15 the plaintiff and attached to such summons and order, ~~respecting the~~
16 ~~matters as set forth in this section and section 25-1026.~~ All answers
17 must be given in writing but do not need to be verified or given
18 under oath. All answers so given will be deemed to be true and
19 subject to all of the penalties of perjury in the event of willful
20 falsification. A garnishee shall be paid a fifty-dollar fee by the
21 plaintiff or his or her agent or attorney at the time of service of a
22 garnishment summons, which fee shall be taxed as part of the costs of
23 the action. Failure to pay the fee renders the garnishment void, and
24 the garnishee need not answer the interrogatories or take any other
25 action. A separate fee shall be paid under this section for each

1 defendant if the garnishment summons is issued for more than one
2 defendant.

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

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

1 Sec. 2. Section 25-1026, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 25-1026 The garnishee shall answer, ~~under oath,~~ all the
4 interrogatories ~~put to him touching~~ furnished by the plaintiff as
5 provided in section 25-1010. The garnishee shall answer all questions
6 regarding the property of every description and credits of the
7 defendant in ~~his~~ the garnishee's possession or ~~under his control~~ at
8 the time of the service of the summons and interrogatories. The
9 garnishee, ~~and he~~ shall disclose ~~truly~~ the amount ~~owing by him~~ the
10 garnishee owes to the defendant, whether due or not, and, in case of
11 a corporation, any stock therein held by or for the benefit of the
12 defendant, at the time of the service of the summons and
13 interrogatories. ~~The fee for filing of answer may be taxed and~~
14 ~~collected in the same manner as other costs in such proceedings.~~

15 Sec. 3. Section 25-1027, Reissue Revised Statutes of
16 Nebraska, is amended to read:

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

1 Sec. 4. Section 25-1028, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 25-1028 If the garnishee fails to answer, as required by
4 section 25-1026, ~~he~~the garnishee shall be presumed to be indebted to
5 the defendant in the full amount of the claim of plaintiff. Upon
6 notice to the garnishee given within such time and in such manner as
7 the court shall direct, judgment may be entered for such amount as
8 the court may find due from the garnishee.

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

11 25-1030.02 The trial of the determination of the
12 liability of the garnishee shall be conducted the same as in a civil
13 action. If it ~~shall appear~~appears upon the trial of the liability of
14 the garnishee that the garnishee was (1) indebted to the defendant,
15 or (2) had any property or credits of the defendant, in ~~his~~the
16 garnishee's possession or ~~under his~~ control at the time of being
17 served with the notice of garnishment, ~~he~~the garnishee shall be
18 liable to the plaintiff, ~~in case if~~ judgment is finally recovered by
19 plaintiff against the defendant, to the full amount thereof, or to
20 the amount of such indebtedness or property held by the garnishee,
21 whichever is less. The plaintiff in such event may have a judgment
22 against the garnishee ~~(1)-(a)~~ for the amount of money due from the
23 garnishee to the defendant in the original action, ~~or (2)-(b)~~ for the
24 delivery to the sheriff or to the clerk of the court of any property
25 in the garnishee's hands belonging to the defendant in the original

1 action within a time to be fixed by the court, or (c) for the value
2 of the ~~same~~ such property as fixed in the judgment if not delivered
3 within the time fixed.

4 Sec. 6. Section 25-1056, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 25-1056 (1) In all cases when a judgment has been entered
7 by any court of record and the judgment creditor or his or her agent
8 or attorney has filed an affidavit setting forth the amount due on
9 the judgment, interest, and costs in the office of the clerk of the
10 court where the judgment has been entered and that ~~he or she~~ the
11 judgment creditor has good reason to and does believe that ~~any~~ the
12 named person, partnership, limited liability company, or corporation,
13 ~~naming him, her, or it,~~ has property of ~~and or~~ is indebted to the
14 judgment debtor, the clerk shall issue a summons which shall set
15 forth the amount due on the judgment, interest, and costs as shown in
16 the affidavit and require such person, partnership, limited liability
17 company, or corporation, as garnishee, to answer written
18 interrogatories to be furnished by the plaintiff and to be attached
19 to such summons ~~respecting the matters as~~ set forth in section
20 sections 25-1010 and 25-1026. The A garnishee shall be paid a fifty-
21 dollar fee by the judgment creditor or his or her agent or attorney
22 at the time of service of a garnishment summons, which fee shall be
23 taxed as part of the judgment creditor's costs. Failure to pay the
24 fee renders the garnishment void, and the garnishee need not answer
25 the interrogatories or take any other action. A separate fee shall be

1 paid under this section for each judgment debtor if the garnishment
2 summons is issued for more than one judgment debtor. Except as
3 otherwise provided in this section, the summons shall be returnable
4 within ten days ~~from~~ after the date of its issuance and shall require
5 the garnishee to answer within ten days ~~from~~ after the date of
6 service upon ~~him or her.~~ such garnishee. Except when wages are
7 involved, the garnishee shall hold the property ~~of every description~~
8 and ~~the~~ credits of the defendant in ~~his or her~~ the garnishee's
9 possession or ~~under his or her~~ control at the time of the service of
10 the summons and interrogatories until ~~the~~ further order of the court.
11 If the only property in the possession or ~~under the~~ control of the
12 garnishee at the time of the service of the summons and
13 interrogatories is credits of the defendant and the amount of such
14 credits is not in dispute by the garnishee, then such garnishee shall
15 only hold the credits of the defendant in ~~his or her~~ the garnishee's
16 possession or ~~under his or her~~ control at the time of the service of
17 the summons and interrogatories to the extent of the amount of the
18 judgment, interest, and costs set forth in the summons until further
19 order of the court. When wages are involved, the garnishee shall pay
20 to the employee all disposable earnings exempted from garnishment by
21 statute, and any disposable earnings remaining after such payment
22 shall be retained by the garnishee until further order of the court.
23 Thereafter, the service of the summons and interrogatories and all
24 further proceedings shall be in all respects the same as is provided
25 for in sections 25-1010, 25-1011, and 25-1026 to 25-1031.01 unless

1 inconsistent with this section.

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

22 Beginning with the pay period during which the writ was
23 served and while the continuing lien remains in effect, the garnishee
24 shall deliver the nonexempt earnings to the court from which the
25 garnishment was issued for each pay period or on a monthly basis if

1 the garnishee so desires and shall deliver to the judgment debtor his
2 or her exempt earnings for each pay period.

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

6 (a) The underlying judgment is satisfied in full or
7 vacated or expires;

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

10 (c) The judgment creditor releases the garnishment;

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

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

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

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

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

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

1 for the support of a person. Garnishments which are not for the
2 support of a person and liens shall be inferior to garnishments for
3 the support of a person.

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

14 Sec. 7. Original sections 25-1010, 25-1026, 25-1027,
15 25-1028, 25-1030.02, and 25-1056, Reissue Revised Statutes of
16 Nebraska, are repealed.