

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 839

Introduced by Janssen, 15.

Read first time January 13, 2014

Committee: Judiciary

A BILL

- 1 FOR AN ACT relating to civil procedure; to amend section 25-1056,
- 2 Reissue Revised Statutes of Nebraska; to change a
- 3 provision relating to garnishment in aid of execution; to
- 4 extend the effective period for a continuing lien; and to
- 5 repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

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

3 25-1056 (1) In all cases when a judgment has been entered
4 by any court of record and the judgment creditor or his or her agent
5 or attorney has filed an affidavit setting forth the amount due on
6 the judgment, interest, and costs in the office of the clerk of the
7 court where the judgment has been entered and that he or she has good
8 reason to and does believe that any person, partnership, limited
9 liability company, or corporation, naming him, her, or it, has
10 property of and is indebted to the judgment debtor, the clerk shall
11 issue a summons which shall set forth the amount due on the judgment,
12 interest, and costs as shown in the affidavit and require such
13 person, partnership, limited liability company, or corporation, as
14 garnishee, to answer written interrogatories to be furnished by the
15 plaintiff and to be attached to such summons respecting the matters
16 set forth in section 25-1026. The summons shall be returnable within
17 ten days from the date of its issuance and shall require the
18 garnishee to answer within ten days from the date of service upon him
19 or her. Except when wages are involved, the garnishee shall hold the
20 property of every description and the credits of the defendant in his
21 or her possession or under his or her control at the time of the
22 service of the summons and interrogatories until the further order of
23 the court. If the only property in the possession or under the
24 control of the garnishee at the time of the service of the summons
25 and interrogatories is credits of the defendant and the amount of

1 such credits is not in dispute by the garnishee, then such garnishee
2 shall only hold the credits of the defendant in his or her possession
3 or under his or her control at the time of the service of the summons
4 and interrogatories to the extent of the amount of the judgment,
5 interest, and costs set forth in the summons until further order of
6 the court. When wages are involved, the garnishee shall pay to the
7 employee all disposable earnings exempted from garnishment by
8 statute, and any disposable earnings remaining after such payment
9 shall be retained by the garnishee until further order of the court.
10 Thereafter, the service of the summons and interrogatories and all
11 further proceedings shall be in all respects the same as is provided
12 for in sections 25-1011 and 25-1026 to 25-1031.01 unless inconsistent
13 with this section.

14 (2) If it appears from the answer of the garnishee that
15 the judgment debtor was an employee of the garnishee, that the
16 garnishee otherwise owed earnings to the judgment debtor when the
17 garnishment order was served, or that earnings would be owed within
18 sixty days thereafter and there is not a successful written objection
19 to the order or the answer of the garnishee filed, on application by
20 the judgment creditor, the court shall order that the nonexempt
21 earnings, if any, withheld by the garnishee after service of the
22 order be transferred to the court for delivery to the judgment
23 creditor who is entitled to such earnings. Except for garnishments in
24 support of a person, the payments may be made payable to the judgment
25 creditor or assignee and shall be forwarded to the issuing court to

1 record the judgment payment prior to the court delivering the payment
2 to the judgment creditor or assignee. The court shall, upon
3 application of the judgment creditor, further order that the
4 garnishment is a continuing lien against the nonexempt earnings of
5 the judgment debtor. An order of continuing lien on nonexempt
6 earnings entered pursuant to this section shall require the garnishee
7 to continue to withhold the nonexempt earnings of the judgment debtor
8 for as long as the continuing lien remains in effect.

9 Beginning with the pay period during which the writ was
10 served and while the continuing lien remains in effect, the garnishee
11 shall deliver the nonexempt earnings to the court from which the
12 garnishment was issued for each pay period or on a monthly basis if
13 the garnishee so desires and shall deliver to the judgment debtor his
14 or her exempt earnings for each pay period.

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

18 (a) The underlying judgment is satisfied in full or
19 vacated or expires;

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

22 (c) The judgment creditor releases the garnishment;

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

25 (e) The judgment debtor has not earned any nonexempt

1 earnings for at least sixty days;

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

3 (g) ~~Ninety days have expired~~ One year has passed since

4 service of the writ. The judgment creditor may extend the lien for a

5 ~~second ninety day period~~ one additional year by filing with the court

6 a notice of extension during the fifteen days immediately prior to

7 the expiration of the initial lien, and the continuing lien in favor

8 of the initial judgment creditor shall continue for a ~~second ninety~~

9 day such period.

10 (4)(a) To determine priority, garnishments and liens

11 shall rank according to time of service.

12 (b) Garnishments, liens, and wage assignments which are

13 not for the support of a person shall be inferior to wage assignments

14 for the support of a person. Garnishments which are not for the

15 support of a person and liens shall be inferior to garnishments for

16 the support of a person.

17 (5) Only one order of continuing lien against earnings

18 due the judgment debtor shall be in effect at one time. If an

19 employee's wages are already being garnished pursuant to a continuing

20 lien at the time of service of a garnishment upon an employer, the

21 answer to garnishment interrogatories shall include such information

22 along with the date of termination of such continuing lien and the

23 title of the case from which such garnishment is issued. Except as

24 provided in subsection (4) of this section, a continuing lien

25 obtained pursuant to this section shall have priority over any

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1 subsequent garnishment or wage assignment.

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