

AMENDMENTS TO LB195

Introduced by Judiciary.

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

3           Section 1. Section 25-1010, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5           25-1010 (1) When an affidavit is filed in a civil action containing  
6 the necessary allegations of an affidavit of attachment and in addition  
7 allegations that the affiant has good reason to and does believe that any  
8 person, partnership, limited liability company, or corporation to be  
9 named ~~and within the county where the action is brought~~ has property of  
10 and is indebted to the defendant, describing such property the same, in  
11 his or her possession that cannot be levied upon by attachment, a judge  
12 of any district court or county court may direct the clerk to issue a  
13 summons and order requiring such person, partnership, limited liability  
14 company, or corporation as garnishee to answer written interrogatories,  
15 to be furnished by the plaintiff and attached to such summons and order,  
16 respecting the matters set forth in section 25-1026. All answers must be  
17 given in writing but do not need to be verified or given under oath. All  
18 answers so given will be deemed to be true and subject to all of the  
19 penalties of perjury in the event of willful falsification.

20           (2) The summons and order referred to in subsection (1) of this  
21 section shall be returnable within five days from the date of the  
22 issuance thereof and shall require the garnishee to answer within ten  
23 days from the date of service upon him or her. The order shall inform the  
24 garnishee (a) of the penalties that may be imposed in the event of  
25 willful falsification, (b) that he or she is obligated to hold the  
26 property of every description and the credits of the defendant in his or  
27 her possession or under his or her control at the time of the service of

1 the order and the interrogatories until further direction from the court,  
2 (c) of his or her ability to obtain discharge from liability to the  
3 defendant under section 25-1027, and (d) of the ability of the court to  
4 enter judgment against him or her upon failure to answer the  
5 interrogatories as provided in section 25-1028. If the answers to the  
6 interrogatories identify property of the defendant in the possession of  
7 the garnishee, the clerk shall mail to the last-known address of the  
8 defendant copies of the garnishment summons and answers to  
9 interrogatories within five days after the return of the answers to the  
10 interrogatories.

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

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

1 except that the judgment creditor may rely upon the designation that was  
2 modified or revoked during the thirty-day period following the effective  
3 date of the modification or revocation if the summons is timely served  
4 upon the financial institution. The department shall update its web site  
5 to reflect a filing by a financial institution pursuant to this  
6 subdivision or a modification or revocation filed by a financial  
7 institution pursuant to this subdivision within ten business days  
8 following the filing by the financial institution. The department web  
9 site shall reflect the date its online records for each financial  
10 institution have most recently been updated.

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

1 processed, and shall provide the address at which the financial  
2 institution is to receive service of summons.

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

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

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

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

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

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

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

1 garnishment is a continuing lien against the nonexempt earnings of the  
2 judgment debtor. An order of continuing lien on nonexempt earnings  
3 entered pursuant to this section shall require the garnishee to continue  
4 to withhold the nonexempt earnings of the judgment debtor for as long as  
5 the continuing lien remains in effect.

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

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

15 (a) The underlying judgment is satisfied in full or vacated or  
16 expires;

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

19 (c) The judgment creditor releases the garnishment;

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

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

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

25 (g) Ninety days have expired since service of the writ. The judgment  
26 creditor may extend the lien for a second ninety-day period by filing  
27 with the court a notice of extension during the fifteen days immediately  
28 prior to the expiration of the initial lien, and the continuing lien in  
29 favor of the initial judgment creditor shall continue for a second  
30 ninety-day period.

31 (4)(a) To determine priority, garnishments and liens shall rank

1 according to time of service.

2 (b) Garnishments, liens, and wage assignments which are not for the  
3 support of a person shall be inferior to wage assignments for the support  
4 of a person. Garnishments which are not for the support of a person and  
5 liens shall be inferior to garnishments for the support of a person.

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

15 (6)(a) In any case involving service of a garnishment summons on a  
16 financial institution where deposits are received within this state, the  
17 financial institution shall (i) if its main-chartered office is located  
18 in this state, designate its main-chartered office for the service of  
19 summons or (ii) if its main-chartered office is located in another state,  
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21 process in this state for service of summons. The designation of a main-  
22 chartered office or an office or branch or the agent for service of  
23 process under this subdivision shall be made by filing a notice of  
24 designation with the Department of Banking and Finance, shall contain the  
25 physical address of the main-chartered office or the office or branch or  
26 the agent for service of process designated, and shall be effective upon  
27 placement on the department web site. The department shall post the list  
28 of such designated main-chartered offices and offices or branches or  
29 agents for service of process on its web site for access by the public. A  
30 financial institution may modify or revoke a designation made under this  
31 subdivision by filing the modification or revocation with the department.

1 The modification or revocation shall be effective when the department's  
2 web site has been updated to reflect the modification or revocation,  
3 except that the judgment creditor may rely upon the designation that was  
4 modified or revoked during the thirty-day period following the effective  
5 date of the modification or revocation if the summons is timely served  
6 upon the financial institution. The department shall update its web site  
7 to reflect a filing by a financial institution pursuant to this  
8 subdivision or a modification or revocation filed by a financial  
9 institution pursuant to this subdivision within ten business days  
10 following the filing by the financial institution. The department web  
11 site shall reflect the date its online records for each financial  
12 institution have most recently been updated.

13 (b) If a financial institution where deposits are received has  
14 designated its main-chartered office or one of its offices or branches or  
15 its agent for service of process for the service of summons, service made  
16 on the main-chartered office or the office or branch or the agent for  
17 service of process so designated shall be valid and effective as to any  
18 property or credits of the defendant in the possession or control of the  
19 main-chartered office of the financial institution in this state and any  
20 of the financial institution offices or branches located within this  
21 state. If service of summons is not made on the main-chartered office or  
22 the office or branch or the agent for service of process designated by  
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25 institution, in its discretion, and without violating any obligation to  
26 its customer, may elect to treat the service of summons as valid and  
27 effective as to any property or credits of the defendant in the  
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29 institution in this state and any of the financial institution offices or  
30 branches located within this state. In the absence of such an election,  
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2 location for receiving service of summons and, therefore, was not  
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4 institution is to receive service of summons.

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

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

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

15 Sec. 3. This act becomes operative on January 1, 2016.

16 Sec. 4. Original sections 25-1010 and 25-1056, Reissue Revised  
17 Statutes of Nebraska, are repealed.