

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 195

FINAL READING

Introduced by Seiler, 33.

Read first time January 13, 2015

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to civil procedure; to amend sections 25-1010
- 2 and 25-1056, Reissue Revised Statutes of Nebraska; to change
- 3 provisions relating to summons and orders of garnishment on
- 4 financial institutions; to provide an operative date; and to repeal
- 5 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 Nebraska, is
2 amended to read:

3 25-1010 (1) When an affidavit is filed in a civil action containing
4 the necessary allegations of an affidavit of attachment and in addition
5 allegations that the affiant has good reason to and does believe that any
6 person, partnership, limited liability company, or corporation to be
7 ~~named and within the county where the action is brought~~ has property of
8 and is indebted to the defendant, describing such property ~~the same~~, in
9 his or her possession that cannot be levied upon by attachment, a judge
10 of any district court or county court may direct the clerk to issue a
11 summons and order requiring such person, partnership, limited liability
12 company, or corporation as garnishee to answer written interrogatories,
13 to be furnished by the plaintiff and attached to such summons and order,
14 respecting the matters set forth in section 25-1026. All answers must be
15 given in writing but do not need to be verified or given under oath. All
16 answers so given will be deemed to be true and subject to all of the
17 penalties of perjury in the event of willful falsification.

18 (2) The summons and order referred to in subsection (1) of this
19 section shall be returnable within five days from the date of the
20 issuance thereof and shall require the garnishee to answer within ten
21 days from the date of service upon him or her. The order shall inform the
22 garnishee (a) of the penalties that may be imposed in the event of
23 willful falsification, (b) that he or she is obligated to 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 order and the interrogatories until further direction from the court,
27 (c) of his or her ability to obtain discharge from liability to the
28 defendant under section 25-1027, and (d) of the ability of the court to
29 enter judgment against him or her upon failure to answer the
30 interrogatories as provided in section 25-1028. If the answers to the
31 interrogatories identify property of the defendant in the possession of

1 the garnishee, the clerk shall mail to the last-known address of the
2 defendant copies of the garnishment summons and answers to
3 interrogatories within five days after the return of the answers to the
4 interrogatories.

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

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

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

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

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

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

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

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

9 25-1056 (1) In all cases when a judgment has been entered by any
10 court of record and the judgment creditor or his or her agent or attorney
11 has filed an affidavit setting forth the amount due on the judgment,
12 interest, and costs in the office of the clerk of the court where the
13 judgment has been entered and that he or she has good reason to and does
14 believe that any person, partnership, limited liability company, or
15 corporation, naming him, her, or it, has property of and is indebted to
16 the judgment debtor, the clerk shall issue a summons which shall set
17 forth the amount due on the judgment, interest, and costs as shown in the
18 affidavit and require such person, partnership, limited liability
19 company, or corporation, as garnishee, to answer written interrogatories
20 to be furnished by the plaintiff and to be attached to such summons
21 respecting the matters set forth in section 25-1026. The summons shall be
22 returnable within ten days from the date of its issuance and shall
23 require the garnishee to answer within ten days from the date of service
24 upon him or her. Except when wages are involved, the garnishee shall hold
25 the property of every description and the credits of the defendant in his
26 or her possession or under his or her control at the time of the service
27 of the summons and interrogatories until the further order of the court.
28 If the only property in the possession or under the control of the
29 garnishee at the time of the service of the summons and interrogatories
30 is credits of the defendant and the amount of such credits is not in
31 dispute by the garnishee, then such garnishee shall only hold the credits

1 of the defendant in his or her possession or under his or her control at
2 the time of the service of the summons and interrogatories to the extent
3 of the amount of the judgment, interest, and costs set forth in the
4 summons until further order of the court. When wages are involved, the
5 garnishee shall pay to the employee all disposable earnings exempted from
6 garnishment by statute, and any disposable earnings remaining after such
7 payment shall be retained by the garnishee until further order of the
8 court. Thereafter, the service of the summons and interrogatories and all
9 further proceedings shall be in all respects the same as is provided for
10 in sections 25-1011 and 25-1026 to 25-1031.01 unless inconsistent with
11 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. 3. This act becomes operative on January 1, 2016.

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