

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 195

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 the defendant, describing such property ~~the same~~, in his or her
9 possession that cannot be levied upon by attachment, a judge of any
10 district court or county court may direct the clerk to issue a summons
11 and order requiring such person, partnership, limited liability company,
12 or corporation as garnishee to answer written interrogatories, to be
13 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 after ~~from~~ the date of the
20 issuance thereof and shall require the garnishee to answer within ten
21 days after ~~from~~ the date of service upon him or her. The order shall
22 inform the garnishee (a) of the penalties that may be imposed in the
23 event of willful falsification, (b) that he or she is obligated to hold
24 the property of every description and the credits of the defendant in his
25 or her possession or under his or her control at the time of the service
26 of the order and the interrogatories until further direction from the
27 court, (c) of his or her ability to obtain discharge from liability to
28 the defendant under section 25-1027, and (d) of the ability of the court
29 to 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) Every financial institution that has its main-chartered
8 office located in this state and that operates more than one office or
9 branch where deposits are received within this state shall designate its
10 main-chartered office for the service of garnishment summons and order.
11 The designation of a main-chartered office under this subdivision shall
12 be made by filing a notice of designation with the Department of Banking
13 and Finance, shall contain the physical address of the main-chartered
14 office designated, and shall be effective upon placement on the
15 department web site. The department shall post the list of the designated
16 main-chartered offices on its web site for access by the general public.
17 A financial institution may modify or revoke a designation made under
18 this subdivision by filing the modification or revocation with the
19 department. The modification or revocation shall be effective when the
20 department's web site has been updated to reflect the modification or
21 revocation, except that a judgment creditor may rely upon the designation
22 that was modified or revoked during the thirty-day period following the
23 effective date of the modification or revocation if the summons and order
24 are timely served upon the financial institution. The department shall
25 update its web site to reflect a filing by a financial institution
26 pursuant to this subdivision or a modification or revocation filed by a
27 financial institution pursuant to this subdivision within ten business
28 days following the filing by the financial institution. The department
29 web site shall reflect the date its online records for each financial
30 institution have most recently been updated.

31 (b) If a financial institution operating more than one office or

1 branch where deposits are received has designated its main-chartered
2 office for the service of summons and order, service made on the main-
3 chartered office so designated shall be valid and effective as to the
4 property of every description and the credits of the defendant in the
5 possession or control of the main-chartered office of the financial
6 institution and any of the financial institution offices or branches
7 located within this state. If service of summons and order is not made on
8 the main-chartered office designated by the financial institution, but
9 instead is made at another office or branch of the financial institution
10 located in this state, the financial institution, in its discretion, and
11 without violating any obligation to its customer, may elect to treat the
12 service of summons and order as valid and effective as to the property of
13 every description and the credits of the defendant in the possession or
14 control of the main-chartered office of the financial institution and any
15 of the financial institution offices or branches located within this
16 state. In the absence of such an election, the financial institution may
17 file a statement with the interrogatories that the summons and order were
18 not served at the financial institution's designated location for
19 receiving service of summons and order and, therefor, were not processed,
20 and shall provide the address at which the financial institution is to
21 receive service of summons and order.

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

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

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

30 25-1056 (1) In all cases when a judgment has been entered by any
31 court of record and the judgment creditor or his or her agent or attorney

1 has filed an affidavit setting forth the amount due on the judgment,
2 interest, and costs in the office of the clerk of the court where the
3 judgment has been entered and that he or she has good reason to and does
4 believe that any person, partnership, limited liability company, or
5 corporation, naming him, her, or it, has property of and is indebted to
6 the judgment debtor, the clerk shall issue a summons which shall set
7 forth the amount due on the judgment, interest, and costs as shown in the
8 affidavit and require such person, partnership, limited liability
9 company, or corporation, as garnishee, to answer written interrogatories
10 to be furnished by the plaintiff and to be attached to such summons
11 respecting the matters set forth in section 25-1026. The summons shall be
12 returnable within ten days after ~~from~~ the date of its issuance and shall
13 require the garnishee to answer within ten days after ~~from~~ the date of
14 service upon him or her. Except when wages are involved, the garnishee
15 shall hold the property of every description and the credits of the
16 defendant in his or her possession or under his or her control at the
17 time of the service of the summons and interrogatories until the further
18 order of the court. If the only property in the possession or under the
19 control of the garnishee at the time of the service of the summons and
20 interrogatories is credits of the defendant and the amount of such
21 credits is not in dispute by the garnishee, then such garnishee shall
22 only hold the credits of the defendant in his or her possession or under
23 his or her control at the time of the service of the summons and
24 interrogatories to the extent of the amount of the judgment, interest,
25 and costs set forth in the summons until further order of the court. When
26 wages are involved, the garnishee shall pay to the employee all
27 disposable earnings exempted from garnishment by statute, and any
28 disposable earnings remaining after such payment shall be retained by the
29 garnishee until further order of the court. Thereafter, the service of
30 the summons and interrogatories and all further proceedings shall be in
31 all respects the same as is provided for in sections 25-1011 and 25-1026

1 to 25-1031.01 unless inconsistent with this section.

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

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

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

30 (a) The underlying judgment is satisfied in full or vacated or
31 expires;

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

3 (c) The judgment creditor releases the garnishment;

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

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

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

9 (g) Ninety days have expired since service of the writ. The judgment
10 creditor may extend the lien for a second ninety-day period by filing
11 with the court a notice of extension during the fifteen days immediately
12 prior to the expiration of the initial lien, and the continuing lien in
13 favor of the initial judgment creditor shall continue for a second
14 ninety-day period.

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

17 (b) Garnishments, liens, and wage assignments which are not for the
18 support of a person shall be inferior to wage assignments for the support
19 of a person. Garnishments which are not for the support of a person and
20 liens shall be inferior to garnishments for the support of a person.

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

30 (6)(a) Every financial institution that has its main-chartered
31 office located in this state and that operates more than one office or

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

23 (b) If a financial institution operating more than one office or
24 branch where deposits are received has designated its main-chartered
25 office for the service of summons and order, service made on the main-
26 chartered office so designated shall be valid and effective as to the
27 property of every description and the credits of the defendant in the
28 possession or control of the main-chartered office of the financial
29 institution and any of the financial institution offices or branches
30 located within this state. If service of summons and order is not made on
31 the main-chartered office designated by the financial institution, but

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

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

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

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

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