

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1006

Introduced by Hansen, M., 26.

Read first time January 15, 2020

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to civil procedure; to amend section 25-1056,
- 2 Reissue Revised Statutes of Nebraska; to change provisions relating
- 3 to garnishment summonses; and to repeal the original section.
- 4 Be it enacted by the people of the State of Nebraska,

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

3 25-1056 (1) In all cases when a judgment has been entered by any
4 court of record and the judgment creditor or his or her agent or attorney
5 has filed an affidavit setting forth the amount due on the judgment,
6 interest, and costs in the office of the clerk of the court where the
7 judgment has been entered and that he or she has good reason to and does
8 believe that any person, partnership, limited liability company, or
9 corporation, naming him, her, or it, has property of and is indebted to
10 the judgment debtor, the clerk shall issue a summons which shall set
11 forth the amount due on the judgment, interest, and costs as shown in the
12 affidavit and require such person, partnership, limited liability
13 company, or corporation, as garnishee, to answer written interrogatories
14 to be furnished by the plaintiff and to be attached to such summons
15 respecting the matters set forth in section 25-1026. The summons shall be
16 returnable within thirty ~~ten~~ days from the date of its issuance and shall
17 require the garnishee to answer within thirty ~~ten~~ days from the date of
18 service upon him or her. Except when wages are involved, the garnishee
19 shall hold the property of every description and the credits of the
20 defendant in his or her possession or under his or her control at the
21 time of the service of the summons and interrogatories until the further
22 order of the court. If the only property in the possession or under the
23 control of the garnishee at the time of the service of the summons and
24 interrogatories is credits of the defendant and the amount of such
25 credits is not in dispute by the garnishee, then such garnishee shall
26 only hold the credits of the defendant in his or her possession or under
27 his or her control at the time of the service of the summons and
28 interrogatories to the extent of the amount of the judgment, interest,
29 and costs set forth in the summons until further order of the court. When
30 wages are involved, the garnishee shall pay to the employee all
31 disposable earnings exempted from garnishment by statute, and any

1 disposable earnings remaining after such payment shall be retained by the
2 garnishee until further order of the court. Thereafter, the service of
3 the summons and interrogatories and all further proceedings shall be in
4 all respects the same as is provided for in sections 25-1011 and 25-1026
5 to 25-1031.01 unless inconsistent with this section.

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

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

31 (3) A continuing lien ordered pursuant to this section shall be

1 invalid and shall have no force and effect upon the occurrence of any of
2 the following:

3 (a) The underlying judgment is satisfied in full or vacated or
4 expires;

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

7 (c) The judgment creditor releases the garnishment;

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

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

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

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

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

21 (b) Garnishments, liens, and wage assignments which are not for the
22 support of a person shall be inferior to wage assignments for the support
23 of a person. Garnishments which are not for the support of a person and
24 liens shall be inferior to garnishments for the support of a person.

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

1 section, a continuing lien obtained pursuant to this section shall have
2 priority over any subsequent garnishment or wage assignment.

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

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

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

28 (d) The notice of designation, modification, or revocation shall be
29 made by a financial institution on forms prescribed by the Department of
30 Banking and Finance department.

31 (e) The Department of Banking and Finance, any employee of the

1 department, or any person acting on behalf of the department shall be
2 immune from civil and criminal liability for any acts or omissions which
3 occur as a result of the requirements of this subsection.

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