

LEGISLATIVE BILL 195

Approved by the Governor May 26, 2015

Introduced by Seiler, 33.

A BILL FOR AN ACT relating to civil procedure; to amend sections 25-1010 and 25-1056, Reissue Revised Statutes of Nebraska; to change provisions relating to summons and orders of garnishment on financial institutions; to provide an operative date; and to repeal the original sections.
Be it enacted by the people of the State of Nebraska,

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

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

(2) The summons and order referred to in subsection (1) of this section shall be returnable within five days from the date of the issuance thereof and shall require the garnishee to answer within ten days from the date of service upon him or her. The order shall inform the garnishee (a) of the penalties that may be imposed in the event of willful falsification, (b) that he or she is obligated to hold the property of every description and the credits of the defendant in his or her possession or under his or her control at the time of the service of the order and the interrogatories until further direction from the court, (c) of his or her ability to obtain discharge from liability to the defendant under section 25-1027, and (d) of the ability of the court to enter judgment against him or her upon failure to answer the interrogatories as provided in section 25-1028. If the answers to the interrogatories identify property of the defendant in the possession of the garnishee, the clerk shall mail to the last-known address of the defendant copies of the garnishment summons and answers to interrogatories within five days after the return of the answers to the interrogatories.

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

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

(b) If a financial institution where deposits are received has designated its main chartered office or one of its offices or branches or its agent for service of process for the service of summons, service made on the main chartered office or the office or branch or the agent for service of process so designated shall be valid and effective as to any property or credits of the defendant in the possession or control of the main chartered office of the

financial institution in this state and any of the financial institution offices or branches located within this state. If service of summons is not made on the main chartered office or the office or branch or the agent for service of process designated by the financial institution, but instead is made at another office or branch of the financial institution located in Nebraska, the financial institution, in its discretion, and without violating any obligation to its customer, may elect to treat the service of summons as valid and effective as to any property or credits of the defendant in the possession or control of the main chartered office of the financial institution in this state and any of the financial institution offices or branches located within this state. In the absence of such an election, the financial institution shall file a statement with the interrogatories that the summons was not served at the financial institution's designated location for receiving service of summons and, therefore, was not processed, and shall provide the address at which the financial institution is to receive service of summons.

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

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

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

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

25-1056 (1) In all cases when a judgment has been entered by any court of record and the judgment creditor or his or her agent or attorney has filed an affidavit setting forth the amount due on the judgment, interest, and costs in the office of the clerk of the court where the judgment has been entered and that he or she has good reason to and does believe that any person, partnership, limited liability company, or corporation, naming him, her, or it, has property of and is indebted to the judgment debtor, the clerk shall issue a summons which shall set forth the amount due on the judgment, interest, and costs as shown in the affidavit and require such person, partnership, limited liability company, or corporation, as garnishee, to answer written interrogatories to be furnished by the plaintiff and to be attached to such summons respecting the matters set forth in section 25-1026. The summons shall be returnable within ten days from the date of its issuance and shall require the garnishee to answer within ten days from the date of service upon him or her. Except when wages are involved, the garnishee shall hold the property of every description and the credits of the defendant in his or her possession or under his or her control at the time of the service of the summons and interrogatories until the further order of the court. If the only property in the possession or under the control of the garnishee at the time of the service of the summons and interrogatories is credits of the defendant and the amount of such credits is not in dispute by the garnishee, then such garnishee shall only hold the credits of the defendant in his or her possession or under his or her control at the time of the service of the summons and interrogatories to the extent of the amount of the judgment, interest, and costs set forth in the summons until further order of the court. When wages are involved, the garnishee shall pay to the employee all disposable earnings exempted from garnishment by statute, and any disposable earnings remaining after such payment shall be retained by the garnishee until further order of the court. Thereafter, the service of the summons and interrogatories and all further proceedings shall be in all respects the same as is provided for in sections 25-1011 and 25-1026 to 25-1031.01 unless inconsistent with this section.

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

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

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

(a) The underlying judgment is satisfied in full or vacated or expires;
(b) The judgment debtor leaves the garnishee's employ for more than sixty days;
(c) The judgment creditor releases the garnishment;
(d) The proceedings are stayed by a court of competent jurisdiction, including the United States Bankruptcy Court;
(e) The judgment debtor has not earned any nonexempt earnings for at least sixty days;

(f) The court orders that the garnishment be quashed; or
(g) Ninety days have expired since service of the writ. The judgment creditor may extend the lien for a second ninety-day period by filing with the court a notice of extension during the fifteen days immediately prior to the expiration of the initial lien, and the continuing lien in favor of the initial judgment creditor shall continue for a second ninety-day period.

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

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

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

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

(b) If a financial institution where deposits are received has designated its main chartered office or one of its offices or branches or its agent for service of process for the service of summons, service made on the main chartered office or the office or branch or the agent for service of process so designated shall be valid and effective as to any property or credits of the defendant in the possession or control of the main chartered office of the financial institution in this state and any of the financial institution offices or branches located within this state. If service of summons is not made on the main chartered office or the office or branch or the agent for service of process designated by the financial institution, but instead is made at another office or branch of the financial institution located in Nebraska, the financial institution, in its discretion, and without violating any obligation to its customer, may elect to treat the service of summons as valid and effective as to any property or credits of the defendant in the possession or control of the main chartered office of the financial institution in this state and any of the financial institution offices or branches located within this state. In the absence of such an election, the financial institution shall file a statement with the interrogatories that the summons was not served at the financial institution's designated location for receiving service of summons and, therefore, was not processed, and shall provide the address at which the financial institution is to receive service of summons.

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

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

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

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

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

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