

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 631

Introduced by Harr, 8.

Read first time January 23, 2013

Committee:

A BILL

1 FOR AN ACT relating to civil procedure; to amend sections 25-1010,
2 25-1027, 25-1028, 25-1030.02, and 25-1056, Reissue
3 Revised Statutes of Nebraska; to change provisions
4 relating to garnishment; and to repeal the original
5 sections.
6 Be it enacted by the people of the State of Nebraska,

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

3 25-1010 (1) When an affidavit is filed in a civil action
4 ~~containing and contains~~ the necessary allegations of an affidavit of
5 attachment and, in addition, contains allegations that the affiant
6 has good reason to and does believe that ~~any~~ the named person,
7 partnership, limited liability company, or corporation ~~to be named~~
8 ~~and within the county where the action is brought~~ has property or
9 credits of the defendant, ~~describing the same~~, in his or her
10 possession or control and describes such property that cannot be
11 levied upon by attachment, a judge of any district court or county
12 court may direct the clerk to issue a summons and order requiring
13 such person, partnership, limited liability company, or corporation
14 as garnishee to answer written interrogatories, to be furnished by
15 the plaintiff and attached to such summons and order, ~~respecting the~~
16 ~~matters~~ as set forth in section 25-1026. All answers must be given in
17 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. The
20 plaintiff or his or her agent at the time of filing the affidavit
21 shall pay a twenty-five dollar fee into the court in any case in
22 which the summons and order is to be served on a financial
23 institution.

24 (2) The summons and order referred to in subsection (1)
25 of this section shall be returnable within five days ~~from~~ after the

1 date of the issuance thereof and shall require the garnishee to
2 answer within ten days ~~from~~ after the date of service upon him or
3 her. The order shall inform the garnishee (a) of the penalties that
4 may be imposed in the event of willful falsification, (b) that ~~he or~~
5 ~~she~~ the garnishee is obligated to hold the property ~~of every~~
6 ~~description~~ and the credits of the defendant in ~~his or her~~ the
7 garnishee's possession or ~~under his or her~~ control at the time of the
8 service of the order and the interrogatories until further direction
9 from the court, subject to the right of the garnishee, if authorized
10 to charge a garnishment fee or similar fee, to collect the fee by
11 deducting the amount of the fee from any property or credits of the
12 defendant, other than wages, in the possession or control of the
13 garnishee prior to remitting such property or credits pursuant to
14 direction from the court, (c) of ~~his or her~~ the garnishee's ability
15 to obtain discharge from liability to the defendant under section
16 25-1027, and (d) of the ability of the court to enter judgment
17 against ~~him or her~~ the garnishee upon failure to answer the
18 interrogatories as provided in section 25-1028. If the answers to the
19 interrogatories identify property or credits of the defendant in the
20 possession of the garnishee, the clerk shall mail to the last-known
21 address of the defendant copies of the garnishment summons and
22 answers to interrogatories within five days after the return of the
23 answers to the interrogatories and return the fee paid pursuant to
24 subsection (1) of this section to the plaintiff. If the answers to
25 the interrogatories indicate that no property or credits of the

1 defendant are in the possession or control of the garnishee, the fee
2 paid pursuant to subsection (1) of this section shall be paid by the
3 court to the garnishee which fee shall be taxed as part of the costs
4 of the action.

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

8 Sec. 2. Section 25-1027, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 25-1027 A garnishee may pay the money ~~owing~~ he or she
11 owes to the defendant ~~by him~~ into the court. ~~He~~ less any fees that
12 may be deducted by the garnishee pursuant to section 25-1010 or
13 25-1056. The garnishee shall be discharged from liability to the
14 defendant for any money so paid not exceeding the plaintiff's claim.
15 ~~He~~ The garnishee shall not be subjected to costs beyond those caused
16 by his ~~the garnishee's~~ resistance of the claim against him; and if he
17 disclose the property in his hands, or the true amount owing by him,
18 and deliver or pay the same according to the order of the court, he
19 shall be allowed his costs. such garnishee.

20 Sec. 3. Section 25-1028, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 25-1028 If the garnishee fails to answer, as required by
23 section 25-1026, ~~he~~ the garnishee shall be presumed to be indebted to
24 the defendant in the full amount of the claim of plaintiff. Upon
25 notice to the garnishee given within such time and in such manner as

1 the court shall direct, judgment may be entered for such amount as
2 the court may find due from the garnishee.

3 Sec. 4. Section 25-1030.02, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 25-1030.02 The trial of the determination of the
6 liability of the garnishee shall be conducted the same as in a civil
7 action. If it ~~shall appear~~ appears upon the trial of the liability of
8 the garnishee that the garnishee was (1) indebted to the defendant,
9 or (2) had any property or credits of the defendant, ~~in his~~ in the
10 garnishee's possession or ~~under his~~ control at the time of being
11 served with the notice of garnishment, ~~he~~ the garnishee shall be
12 liable to the plaintiff, ~~in case~~ if judgment is finally recovered by
13 plaintiff against the defendant, to the full amount thereof, or to
14 the amount of such indebtedness or property held by the garnishee,
15 whichever is less. The plaintiff in such event may have a judgment
16 against the garnishee ~~(1)~~ (a) for the amount of money due from the
17 garnishee to the defendant in the original action, ~~or~~ (b) for the
18 delivery to the sheriff or to the clerk of the court of any property
19 in the garnishee's hands belonging to the defendant in the original
20 action within a time to be fixed by the court, or (c) for the value
21 of ~~the same~~ such property as fixed in the judgment if not delivered
22 within the time fixed.

23 Sec. 5. Section 25-1056, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 25-1056 (1) In all cases when a judgment has been entered

1 by any court of record and the judgment creditor or his or her agent
2 or attorney has filed an affidavit setting forth the amount due on
3 the judgment, interest, and costs in the office of the clerk of the
4 court where the judgment has been entered and that ~~he or she~~ the
5 judgment creditor has good reason to and does believe that ~~any~~ the
6 named person, partnership, limited liability company, or corporation,
7 ~~naming him, her, or it,~~ has property of ~~and or~~ is indebted to the
8 judgment debtor, the clerk shall issue a summons which shall set
9 forth the amount due on the judgment, interest, and costs as shown in
10 the affidavit and require such person, partnership, limited liability
11 company, or corporation, as garnishee, to answer written
12 interrogatories to be furnished by the plaintiff and to be attached
13 to such summons ~~respecting the matters as~~ set forth in ~~section~~
14 sections 25-1010 and 25-1026. The judgment creditor at the time of
15 filing the affidavit shall pay a twenty-five dollar fee into the
16 court in any case in which the summons is to be served upon a
17 financial institution. The summons shall be returnable within ten
18 days ~~from~~ after the date of its issuance and shall require the
19 garnishee to answer within ten days ~~from~~ after the date of service
20 upon ~~him or her~~ the garnishee. Except when wages are involved, the
21 garnishee shall hold the property of ~~every description~~ and the
22 credits of the defendant in ~~his or her~~ the garnishee's possession or
23 ~~under his or her~~ control at the time of the service of the summons
24 and interrogatories until ~~the~~ further order of the court, subject to
25 the right of the garnishee, if authorized to charge a garnishment fee

1 or similar fee, to collect the fee by deducting the amount of the fee
2 from any property or credits, other than wages, of the defendant in
3 the possession or control of the garnishee prior to remitting such
4 property or credits pursuant to direction from the court. If the
5 answers to the interrogatories identify property or credits of the
6 defendant in the possession of the garnishee, the clerk shall mail to
7 the last-known address of the defendant copies of the garnishment
8 summons and answers to interrogatories within five days after the
9 return of the answers to the interrogatories and return the fee paid
10 pursuant to this subsection to the plaintiff. If the only property in
11 the possession or ~~under the~~ control of the garnishee at the time of
12 the service of the summons and interrogatories is credits of the
13 defendant and the amount of such credits is not in dispute by the
14 garnishee, then such garnishee shall only hold the credits of the
15 defendant in ~~his or her~~ the garnishee's possession or ~~under his or~~
16 ~~her~~ control at the time of the service of the summons and
17 interrogatories to the extent of the amount of the judgment,
18 interest, and costs set forth in the summons until further order of
19 the court. If the answers to the interrogatories indicate that no
20 property or credits of the defendant are in the possession or control
21 of the garnishee, the fee paid pursuant to this subsection shall be
22 paid by the court to the garnishee, which fee shall be taxed as part
23 of the costs of the action. When wages are involved, the garnishee
24 shall pay to the employee all disposable earnings exempted from
25 garnishment by statute, and any disposable earnings remaining after

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

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

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

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

10 (a) The underlying judgment is satisfied in full or
11 vacated or expires;

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

14 (c) The judgment creditor releases the garnishment;

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

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

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

20 (g) Ninety days have expired since service of the writ.

21 The judgment creditor may extend the lien for a second ninety-day
22 period by filing with the court a notice of extension during the
23 fifteen days immediately prior to the expiration of the initial lien,
24 and the continuing lien in favor of the initial judgment creditor
25 shall continue for a second ninety-day period.

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

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

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

18 Sec. 6. Original sections 25-1010, 25-1027, 25-1028,
19 25-1030.02, and 25-1056, Reissue Revised Statutes of Nebraska, are
20 repealed.