

SENATE BILL No. 366

AN ACT concerning civil procedure; relating to attachment and garnishment; amending K.S.A. 60-733 and 61-3506 and K.S.A. 2011 Supp. 60-736, 60-738, 60-739, 61-3509, 61-3511 and 61-3512 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 60-733 is hereby amended to read as follows: 60-733. (a) The written direction of a party seeking an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall state the amount to be withheld, which shall be 110% of the amount of the judgment creditor's claim, in the case of prejudgment garnishment, or 110% of the amount of the current balance due under the judgment, in the case of postjudgment garnishment. The garnishee, without prior agreement, may withhold and retain to defray the garnishee's costs, an administrative fee of ~~\$10~~ \$15 for each order of garnishment that attaches funds, credits or indebtedness. Such administrative fee shall be in addition to the amount required to be withheld under the order for garnishment, except that if the amount required to be withheld under the order for garnishment is greater than the amount of the funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company, the fee shall be deducted from the amount withheld.

(b) All orders of garnishment issued in this state for the purpose of attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the judgment debtor's address and tax identification number, if known, and shall specify the amount of funds, credits or indebtedness to be withheld by the garnishee, which shall be 110% of the amount of the judgment creditor's claim or 110% of the amount of the current balance due under the judgment, as stated in the written direction of the party seeking the order.

(c) The forms provided by law for an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the following statement:

"If you hold any funds, credits or indebtedness belonging to or owing the judgment debtor, the amount to be withheld by you pursuant to this order of garnishment is not to exceed

\$ _____."

(amount stated in direction)

(d) (1) The forms provided by law for the answer to an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the following statement:

"The amount of the funds, credits or indebtedness belonging to or owing the judgment debtor which I shall hold shall not exceed

\$ _____."

(amount stated in order)

(2) The answer shall further include information that such account is owned in joint tenancy with one or more individuals who are not subject to the garnishment, if applicable.

(e) If an order of garnishment attaches funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company and the garnishee holds funds or credits or is indebted to the judgment debtor in two or more accounts, the garnishee may withhold payment of the amount attached from any one or more of such accounts.

(f) If an order of garnishment attaches funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company and the garnishee holds funds or credits or is indebted to the judgment debtor in an account which judgment debtor owns in joint tenancy with one or more individuals who are not subject to the garnishment, the garnishee shall withhold the entire amount sought by the garnishment. Neither the garnisher nor the garnishee shall be liable to the joint owners if the ownership of the funds is later proven not to be the judgment debtor's.

(g) No party shall seek an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, savings bank, credit union or finance company except on good faith belief of the party seeking garnishment that the party to be served with the garnishment order has, or will have, assets of the judgment debtor. Except as provided further, not more than two garnishments shall be issued by a

party seeking an order of garnishment applicable to the same claim or claims and against the same judgment debtor in any 30-day period. A judge may order an exception to this subsection in any case in which the party seeking the garnishment shall in person or by attorney: (1) Certify that the garnishment is not for the purpose of harassment of the debtor, and (2) state facts demonstrating to the satisfaction of the judge that there is reason to believe that the garnishee has property or credits of the debtor which are not exempt from execution.

Sec. 2. K.S.A. 2011 Supp. 60-736 is hereby amended to read as follows: 60-736. This section shall apply if the garnishment is to attach intangible property other than earnings of the judgment debtor.

(a) The answer of the garnishee shall be substantially in compliance with the forms set forth by the judicial council.

(b) Within 14 days after service, other than that required pursuant to K.S.A. 40-218, and amendments thereto, upon a garnishee of an order of garnishment the garnishee shall complete the answer form stating the facts with respect to the demands of the order and ~~file~~ send the completed answer with the clerk of the court. ~~The clerk shall cause a copy of the answer to be mailed promptly~~ to the judgment creditor and judgment debtor at the addresses listed on the answer form. The answer shall be supported by unsworn declaration in the manner set forth on the answer form.

Sec. 3. K.S.A. 2011 Supp. 60-738 is hereby amended to read as follows: 60-738. (a) No later than 14 days after the garnishee makes the answer and ~~the clerk or the garnishee~~ sends it to the judgment creditor and judgment debtor, the judgment creditor or judgment debtor, or both, may file a reply disputing any statement in the answer of the garnishee. A copy of the reply shall be sent by the party filing same to the other party, to any other judgment creditors affected and to the garnishee. The party filing the reply shall notify the court and schedule a hearing on the reply to be held within 30 days after filing of the reply.

(b) At the hearing, the court shall determine and rule on all issues related to the reply. The burden of proof shall be upon the party filing the reply to disprove the statements of the answer, except that the garnishee shall have the burden of proving offsets or indebtedness claimed to be due from the judgment debtor to the garnishee, or liens asserted by the garnishee against personal property of the judgment debtor. The provisions of K.S.A. 60-719, and amendments thereto, relating to offsets claimed by the garnishee shall be applicable to lawsuits filed pursuant to the code of civil procedure for limited actions.

Sec. 4. K.S.A. 2011 Supp. 60-739 is hereby amended to read as follows: 60-739. (a) The court shall direct the garnishee to pay to the ~~court~~ judgment creditor such amount that the garnishee is holding, as indicated by the answer, or such lesser amount as warranted, if:

(1) The garnishment has attached to *intangible* property other than earnings of the judgment debtor;

(2) fourteen days have passed since receipt of the answer of the garnishee by the ~~court~~ judgment creditor; and

(3) no reply to the answer has been filed.

(b) The ~~court~~ judgment creditor shall promptly refund to the judgment debtor any overpayment of the claim. The garnishee may release the funds, credits or indebtedness that have been attached pursuant to the order of garnishment if no order to pay the ~~court~~ judgment creditor has been received within 60 days following the receipt of the answer of the garnishee by the ~~court~~ judgment creditor.

(c) *The garnishee shall not be liable to any judgment creditor or judgment debtor and shall not be assessed any penalty by reason of any action taken in good faith by the garnishee in accordance with the provisions of article 7 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.*

Sec. 5. K.S.A. 61-3506 is hereby amended to read as follows: 61-3506.

(a) The written direction of a party seeking an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall state the amount to be withheld, which shall be 110% of the amount of the judgment creditor's claim, in the case of prejudgment garnishment, or 110% of the amount of the current balance due under the judgment, in the case of postjudg-

ment garnishment. The garnishee, without prior agreement, may withhold and retain to defray the garnishee's costs, an administrative fee of ~~\$10~~ \$15 for each order of garnishment that attaches funds, credits or indebtedness. Such administrative fee shall be in addition to the amount required to be withheld under the order for garnishment, except that if the amount required to be withheld under the order for garnishment is greater than the amount of the funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company, the fee shall be deducted from the amount withheld.

(b) All orders of garnishment issued in this state for the purpose of attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the judgment debtor's address and tax identification number, if known, and shall specify the amount of funds, credits or indebtedness to be withheld by the garnishee, which shall be 110% of the amount of the judgment creditor's claim or 110% of the amount of the current balance due under the judgment, as stated in the written direction of the party seeking the order.

(c) The forms provided by law for an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the following statement:

"If you hold any funds, credits or indebtedness belonging to or owing the judgment debtor, the amount to be withheld by you pursuant to this order of garnishment is not to exceed

\$ _____."

(amount stated in direction)

(d) (1) The forms provided by law for the answer to an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the following statement:

"The amount of the funds, credits or indebtedness belonging to or owing the judgment debtor which I shall hold shall not exceed

\$ _____."

(amount stated in order)

(2) The answer shall further include information that such account is owned in joint tenancy with one or more individuals who are not subject to the garnishment, if applicable.

(e) If an order of garnishment attaches funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company and the garnishee holds funds or credits or is indebted to the judgment debtor in two or more accounts, the garnishee may withhold payment of the amount attached from any one or more of such accounts.

(f) If an order of garnishment attaches funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company and the garnishee holds funds or credits or is indebted to the judgment debtor in an account which judgment debtor owns in joint tenancy with one or more individuals who are not subject to the garnishment, the garnishee shall withhold the entire amount sought by the garnishment. Neither the garnishor nor the garnishee shall be liable to the joint owners if the ownership of the funds is later proven not to be the judgment debtor's.

(g) No party shall seek an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, savings bank, credit union or finance company except on good faith belief of the party seeking garnishment that the party to be served with the garnishment order has, or will have, assets of the judgment debtor. Except as provided further, not more than two garnishments shall be issued by a party seeking an order of garnishment applicable to the same claim or claims and against the same judgment debtor in any 30-day period. A judge may order an exception to this subsection in any case in which the party seeking the garnishment shall in person or by attorney: (1) Certify that the garnishment is not for the purpose of harassment of the debtor, and (2) state facts demonstrating to the satisfaction of the judge that there is reason to believe that the garnishee has property or credits of the debtor which are not exempt from execution.

Sec. 6. K.S.A. 2011 Supp. 61-3509 is hereby amended to read as follows: 61-3509. This section shall apply if the garnishment is to attach intangible property other than earnings of the judgment debtor.

Within 14 days after service upon a garnishee of an order of garnishment the garnishee shall complete the answer in accordance with the instructions accompanying the answer form stating the facts with respect to the demands of the order and ~~file~~ *send* the completed answer ~~with the clerk of the court. The clerk shall cause a copy of the answer to be mailed promptly~~ to the judgment creditor and judgment debtor at the addresses listed on the answer form. The answer shall be supported by unsworn declaration in the manner set forth on the answer form.

Sec. 7. K.S.A. 2011 Supp. 61-3511 is hereby amended to read as follows: 61-3511. (a) No later than 14 days after the garnishee makes the answer and ~~the clerk or the garnishee~~ sends it to the judgment creditor and judgment debtor, the judgment creditor or judgment debtor, or both, may file a reply disputing any statement in the answer of the garnishee. A copy of the reply shall be sent by the party filing same to the other party, to any other judgment creditors affected and to the garnishee. The party filing the reply shall notify the court and schedule a hearing on the reply to be held within 30 days after filing of the reply.

(b) At the hearing, the court shall determine and rule on all issues related to the reply. The burden of proof shall be upon the party filing the reply to disprove the statements of the answer, except that the garnishee shall have the burden of proving offsets or indebtedness claimed to be due from the judgment debtor to the garnishee, or liens asserted by the garnishee against personal property of the judgment debtor. The provisions of K.S.A. 60-719, and amendments thereto, relating to offsets claimed by the garnishee shall be applicable to lawsuits filed pursuant to the code of civil procedure for limited actions.

Sec. 8. K.S.A. 2011 Supp. 61-3512 is hereby amended to read as follows: 61-3512. (a) The court shall direct the garnishee to pay to the ~~court~~ *judgment creditor* such amount that the garnishee is holding, as indicated by the answer, or such lesser amount as warranted, if:

- (1) The garnishment has attached to *intangible* property other than earnings of the judgment debtor;
- (2) fourteen days have passed since receipt of the answer of the garnishee by the ~~court~~ *judgment creditor*; and
- (3) no reply to the answer has been filed.

(b) The ~~court~~ *judgment creditor* shall promptly refund to the judgment debtor any overpayment of the claim. The garnishee may release the funds, credits or indebtedness that have been attached pursuant to the order of garnishment if no order to pay the ~~court~~ *judgment creditor* has been received within 60 days following the receipt of the answer of the garnishee by the ~~court~~ *judgment creditor*.

(c) *The garnishee shall not be liable to any judgment creditor or judgment debtor and shall not be assessed any penalty by reason of any action taken in good faith by the garnishee in accordance with the provisions of article 35 of chapter 61 of the Kansas Statutes Annotated, and amendments thereto.*

Sec. 9. K.S.A. 60-733 and 61-3506 and K.S.A. 2011 Supp. 60-736, 60-738, 60-739, 61-3509, 61-3511 and 61-3512 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.