

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 136

Introduced by Ebke, 32.

Read first time January 09, 2017

Committee:

1 A BILL FOR AN ACT relating to civil procedure; to amend sections 25-1029
2 and 25-1056, Reissue Revised Statutes of Nebraska; to provide for
3 release of certain property attached pursuant to an order of
4 garnishment as prescribed; to change provisions relating to the
5 effect of garnishment summons issued to financial institutions as
6 prescribed; and to repeal the original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 25-1029, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 25-1029 If the garnishee answers that, at the time of the service of
4 the summons and interrogatories upon him or her, he or she was possessed
5 of any property of the defendant or was indebted to him or her, the court
6 may order the delivery of such property and the payment of the amount
7 owing by the garnishee into court; or the court may permit the garnishee
8 to retain the property or the amount owing, upon the execution of an
9 undertaking to the plaintiff by one or more sufficient sureties to the
10 effect that the amount shall be paid or the property forthcoming as the
11 court may direct. If the garnishee presents to the court, by affidavit or
12 otherwise, specific facts demonstrating that no sureties are necessary to
13 insure that the amount owing by the garnishee shall be paid, or the
14 property forthcoming, the court may allow the undertaking to be executed
15 by the garnishee alone. The garnishee may release the funds, credits, or
16 indebtedness that have been attached pursuant to the order of garnishment
17 if no order to pay the judgment creditor has been received by the
18 garnishee within sixty days following the receipt, by the judgment
19 creditor, of the garnishee's answer.

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

22 25-1056 (1) In all cases when a judgment has been entered by any
23 court of record and the judgment creditor or his or her agent or attorney
24 has filed an affidavit setting forth the amount due on the judgment,
25 interest, and costs in the office of the clerk of the court where the
26 judgment has been entered and that he or she has good reason to and does
27 believe that any person, partnership, limited liability company, or
28 corporation, naming him, her, or it, has property of and is indebted to
29 the judgment debtor, the clerk shall issue a summons which shall set
30 forth the amount due on the judgment, interest, and costs as shown in the
31 affidavit and require such person, partnership, limited liability

1 company, or corporation, as garnishee, to answer written interrogatories
2 to be furnished by the plaintiff and to be attached to such summons
3 respecting the matters set forth in section 25-1026. The summons shall be
4 returnable within ten days from the date of its issuance and shall
5 require the garnishee to answer within ten days from the date of service
6 upon him or her. Except when wages are involved, the garnishee shall hold
7 the property of every description and the credits of the defendant in his
8 or her possession or under his or her control at the time of the service
9 of the summons and interrogatories until the further order of the court.
10 If the only property in the possession or under the control of the
11 garnishee at the time of the service of the summons and interrogatories
12 is credits of the defendant and the amount of such credits is not in
13 dispute by the garnishee, then such garnishee shall only hold the credits
14 of the defendant in his or her possession or under his or her control at
15 the time of the service of the summons and interrogatories to the extent
16 of the amount of the judgment, interest, and costs set forth in the
17 summons until further order of the court. When wages are involved, the
18 garnishee shall pay to the employee all disposable earnings exempted from
19 garnishment by statute, and any disposable earnings remaining after such
20 payment shall be retained by the garnishee until further order of the
21 court. Thereafter, the service of the summons and interrogatories and all
22 further proceedings shall be in all respects the same as is provided for
23 in sections 25-1011 and 25-1026 to 25-1031.01 unless inconsistent with
24 this section.

25 (2)(a) ~~(2)~~ If it appears from the answer of the garnishee that the
26 judgment debtor was an employee of the garnishee, that the garnishee
27 otherwise owed earnings to the judgment debtor when the garnishment order
28 was served, or that earnings would be owed within sixty days thereafter
29 and there is not a successful written objection to the order or the
30 answer of the garnishee filed, on application by the judgment creditor,
31 the court shall order that the nonexempt earnings, if any, withheld by

1 the garnishee after service of the order be transferred to the court for
2 delivery to the judgment creditor who is entitled to such earnings.
3 Except for garnishments in support of a person, the payments may be made
4 payable to the judgment creditor or assignee and shall be forwarded to
5 the issuing court to record the judgment payment prior to the court
6 delivering the payment to the judgment creditor or assignee.

7 (b) The court shall, upon application of the judgment creditor,
8 further order that the garnishment is a continuing lien against the
9 nonexempt earnings of the judgment debtor. An order of continuing lien on
10 nonexempt earnings entered pursuant to this section shall require the
11 garnishee to continue to withhold the nonexempt earnings of the judgment
12 debtor for as long as the continuing lien remains in effect.

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

19 (c) The garnishee may release the funds, credits, or indebtedness
20 that have been attached pursuant to the order of garnishment if no order
21 to pay the judgment creditor has been received by the garnishee within
22 sixty days following the receipt, by the judgment creditor, of the
23 garnishee's answer.

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

27 (a) The underlying judgment is satisfied in full or vacated or
28 expires;

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

31 (c) The judgment creditor releases the garnishment;

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

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

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

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

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

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

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

27 (6)(a) In any case involving service of a garnishment summons on a
28 financial institution where deposits are received within this state, the
29 financial institution shall (i) if its main chartered office is located
30 in this state, designate its main chartered office for the service of
31 summons or (ii) if its main chartered office is located in another state,

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

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

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

17 (c) In any case involving service of a garnishment summons on a
18 financial institution where deposits are received within this state, if
19 the judgment debtor is an employee of the financial institution, the
20 garnishment summons shall apply only to the earnings of the judgment
21 debtor.

22 (d) (e) For purposes of this subsection, financial institution means
23 a 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 (e) (d) The notice of designation, modification, or revocation shall
27 be made by a financial institution on forms prescribed by the department.

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

1 Sec. 3. Original sections 25-1029 and 25-1056, Reissue Revised
2 Statutes of Nebraska, are repealed.