

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 978

Introduced by Harr, 8.

Read first time January 10, 2018

Committee:

- 1 A BILL FOR AN ACT relating to civil procedure; to amend sections 25-1011,
- 2 25-1017, 25-1056, and 25-1558, Reissue Revised Statutes of Nebraska;
- 3 to change provisions relating to garnishment; to harmonize
- 4 provisions; to provide an operative date; and to repeal the original
- 5 sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 25-1011, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 25-1011 (1) The summons and order of garnishment and the
4 interrogatories in duplicate, a notice to judgment debtor form, and a
5 request for hearing form shall be served upon the garnishee in the manner
6 provided for service of a summons in a civil action.

7 (2) The judgment creditor or his or her agent or attorney shall send
8 to the judgment debtor by certified mail to the last-known address of the
9 judgment debtor a copy of the summons and order of garnishment, a notice
10 to judgment debtor form, a completed notice of garnishment that satisfies
11 section 2 of this act, and a request for hearing form within seven
12 business days after issuance by the court and shall certify in writing to
13 the court the date of the mailing.

14 (3) The Supreme Court by rule of court shall promulgate uniform
15 garnishment forms for use in all courts in this state. The forms shall
16 include the summons and order of garnishment, the garnishment
17 interrogatories, a notice to judgment debtor form, a notice of
18 garnishment that satisfies section 2 of this act, and a request for
19 hearing form.

20 (4) The notice to judgment debtor form shall include the following
21 information:

22 (a) That certain funds are exempt from garnishment if such funds are
23 from certain government benefits and other sources;

24 (b) That wages are exempt up to a certain level and the amount that
25 can be garnished varies if the judgment debtor is the head of a family;

26 (c) That if the judgment debtor believes the court should not allow
27 a garnishment either because the funds sought are exempt or because the
28 amount is not owed on the judgment, the judgment debtor is entitled to a
29 hearing within ten days after a request by the judgment debtor to
30 determine such issues; and

31 (d) That if the judgment debtor wishes a hearing as prescribed in

1 subdivision (c) of this subsection, the judgment debtor shall make a
2 request by filling out the request for hearing form and file the form
3 with the court within three business days after receipt of the notice to
4 judgment debtor form by the judgment debtor.

5 (5) If the judgment debtor in a garnishment proceeding requests a
6 hearing, the court shall grant the hearing within ten days of the
7 request.

8 Sec. 2. (1) For purposes of this section, original judgment
9 creditor means a person to whom a judgment debtor originally owed the
10 obligation for which a garnishment is sought.

11 (2) The notice of garnishment required by subsection (2) of section
12 25-1011 must be in substantially the following form:

13 Notice of Garnishment

14 Money Will Be Taken from Your Pay If You Fail to Act

15 1. Why Am I Getting This Notice? You are getting this notice because (name of
16 judgment creditor) says you owe them money.
17 (Name or shortened name of judgment creditor) has
18 started a legal process called "garnishment".
19 The process requires your employer to take money
20 from your pay and give it to (name or shortened name
21 of judgment creditor) to pay what you owe.
22 Your employer does not keep the money.
23 If the line below is checked, (name or shortened
24 name of judgment creditor) is not the judgment
25 creditor to whom you originally owed money. If
26 that is the case, knowing the name of the original
27 judgment creditor might help you understand why
28 money will be taken from your pay.
29 The amount you owe originally comes from a debt
30 you owed to (name of original judgment creditor).

1 2. How Much Do I (Name or shortened name of judgment creditor) says
2 Owe? you currently owe \$(state amount). The amount could
3 go up if there are more court costs or additional
4 interest. The amount also could go down if you make
5 extra payments to the court.

6 3. How Will The Your employer will soon be required to start taking
7 Amount I Owe money from your pay. The rules about how much of
8 Be Paid? your pay can be taken are explained in the
9 notice to judgment debtor form that you received
10 with this notice. At any time, you may ask the
11 employer for a report that shows how your employer
12 calculated the amount taken from your pay.

13 4. What Options Do You have three options:
14 I Have? 1. Talk with a lawyer. A lawyer can explain the
15 situation to you and help you decide what to do.
16 This office can help you find a lawyer:
17 (insert name and contact information for legal aid
18 or lawyer referral service).

19 2. Contact (insert name or shortened name of
20 judgment creditor). If you can work something out
21 with them, money might not have to be taken from
22 your pay. This is the judgment creditor's contact
23 information: (Insert judgment creditor's contact
24 information)

25 3. Request a court hearing. A hearing could be
26 helpful if there are any disagreements about the
27 garnishment, for example, if you don't think the
28 amount taken from your pay is correct.

29 To request a hearing, complete the "Request For
30 Hearing" section at the bottom of the "Notice to

1 Judgment Debtor" form.
2 5. What If I Don't If you don't do anything, the law requires that
3 Do Anything? money be taken out of your pay every payday and
4 given to (name or shortened name of judgment
5 creditor).

6 Sec. 3. Section 25-1017, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 25-1017 An order of attachment binds the property attached from the
9 time of service, and the garnishee shall stand liable to the plaintiff in
10 attachment for all property, money, and credits in his or her hands, or
11 due from him or her to defendant, from the time he or she is served with
12 the written notices ~~notice~~ mentioned in section 25-1011, notwithstanding
13 the money or debt owing by such garnishee, and which is sought to be
14 attached, may be payable at the place of residence of a nonresident
15 defendant; but where the property is attached in the hands of a
16 consignee, his or her lien thereon shall not be affected by the
17 attachment.

18 At the time of the issuance of the order of attachment, all interest
19 and other costs due, as of that date, shall be computed. All interest and
20 other costs which accrue after such date shall be specified on a per day
21 basis or such other basis for assessment as may exist. Upon delivery of
22 the attached property by the garnishee, such garnishee shall not be
23 liable for interest or costs other than those specified in the order of
24 attachment.

25 Sec. 4. Section 25-1056, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 25-1056 (1) In all cases when a judgment has been entered by any
28 court of record and the judgment creditor or his or her agent or attorney
29 has filed an affidavit setting forth the amount due on the judgment,
30 interest, and costs in the office of the clerk of the court where the
31 judgment has been entered and that he or she has good reason to and does

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

30 (2) If it appears from the answer of the garnishee that the judgment
31 debtor was an employee of the garnishee, that the garnishee otherwise

1 owed earnings to the judgment debtor when the garnishment order was
2 served, or that earnings would be owed within sixty days thereafter and
3 there is not a successful written objection to the order or the answer of
4 the garnishee filed, on application by the judgment creditor, the court
5 shall order that the nonexempt earnings, if any, withheld by the
6 garnishee after service of the order be transferred to the court for
7 delivery to the judgment creditor who is entitled to such earnings.
8 Except for garnishments in support of a person, the payments may be made
9 payable to the judgment creditor or assignee and shall be forwarded to
10 the issuing court to record the judgment payment prior to the court
11 delivering the payment to the judgment creditor or assignee. Payments may
12 be made electronically. If electronic payment is made directly to the
13 judgment creditor or assignee, the employer shall provide contemporaneous
14 notice of the payment to the court. For purposes of this subsection,
15 electronic or electronically means relating to technology having
16 electrical, digital, magnetic, wireless, optical, electromagnetic, or
17 similar capabilities. The court shall, upon application of the judgment
18 creditor, further order that the garnishment is a continuing lien against
19 the nonexempt earnings of the judgment debtor. An order of continuing
20 lien on nonexempt earnings entered pursuant to this section shall require
21 the garnishee to continue to withhold the nonexempt earnings of the
22 judgment debtor for as long as the continuing lien remains in effect.

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

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

1 (a) The underlying judgment is satisfied in full or vacated or
2 expires;

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

5 (c) The judgment creditor releases the garnishment;

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

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

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

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

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

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

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

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

30 (b) If a financial institution where deposits are received has
31 designated its main chartered office or one of its offices or branches or

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

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

28 (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. 5. Section 25-1558, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 25-1558 (1) Except as provided in subsection (2) of this section,
4 the maximum part of the aggregate disposable earnings of an employee
5 ~~individual~~ for any workweek which is subject to garnishment shall not
6 exceed the lesser of the following amounts:

7 (a) ~~Twenty~~ ~~Twenty-five~~ percent of his or her disposable earnings for
8 that week; or

9 (b) The amount by which his or her disposable earnings for that week
10 exceed forty ~~thirty~~ times the federal minimum hourly wage prescribed by
11 29 U.S.C. 206(a)(1) in effect at the time earnings are payable. ~~;~~ ~~or~~

12 ~~(c) Fifteen percent of his or her disposable earnings for that week,~~
13 ~~if the individual is a head of a family.~~

14 (2) The restrictions of subsection (1) of this section shall not
15 apply in the case of:

16 (a) Any order of any court for the support of any persons;

17 (b) Any order of any court of bankruptcy under Chapter XIII of the
18 Bankruptcy Code Act; or

19 (c) Any debt due for any state or federal tax.

20 (3) No court shall make, execute, or enforce any order or process in
21 violation of this section. The exemptions allowed in this section shall
22 be granted to any employee ~~person~~ so entitled without any further
23 proceedings.

24 (4) For the purposes of this section:

25 (a) Earnings means ~~shall mean~~ compensation paid or payable by an
26 employer to an employee for personal services, whether denominated as
27 wages, salary, commission, bonus, or otherwise, and includes periodic
28 payments pursuant to a pension or retirement program;

29 **(b) Employee means an individual, including a former employee who is**
30 **owed earnings, who:**

31 **(i) Is treated by an employer as an employee for federal-employment-**

1 tax purposes; or

2 (ii) Receives earnings from an employer through periodic payments
3 and is not treated by the employer as an employee for federal-employment-
4 tax purposes.

5 (c) (b) Disposable earnings means shall mean that part of the
6 earnings of any employee individual remaining after the deduction from
7 those earnings of any amounts required by law to be withheld; and

8 (d) (c) Garnishment means shall mean any legal or equitable
9 procedure through which the earnings of any employee individual are
10 required to be withheld for payment of any debt. ; and

11 (d) Head of a family shall mean an individual who actually supports
12 and maintains one or more individuals who are closely connected with him
13 or her by blood relationship, relationship by marriage, by adoption, or
14 by guardianship, and whose right to exercise family control and provide
15 for the dependent individuals is based upon some moral or legal
16 obligation.

17 (5) Every assignment, sale, transfer, pledge, or mortgage of the
18 wages or salary of an employee individual which is exempted by this
19 section, to the extent of the exemption provided by this section, is
20 shall be void and unenforceable by any process of law.

21 (6) An employer may not discharge or take other adverse action
22 against an employee because of a garnishment or attempted garnishment. No
23 employer shall discharge any employee by reason of the fact that his or
24 her earnings have been subjected to garnishment for any one indebtedness.

25 (7) In the case of earnings for any pay period other than a week,
26 the Commissioner of Labor shall by regulation prescribe a multiple of the
27 federal minimum hourly wage equivalent in effect to that set forth in
28 this section.

29 (8) If an employer withholds earnings from more than one employee to
30 be transferred to the same court by electronic payment under subsection
31 (2) of section 25-1056, then the employer may combine the amounts in one

1 electronic payment to the court provided that it specifies the name, case
2 number, and amount for each employee. If an employer withholds earnings
3 from more than one employee to be transferred to the same court by check,
4 draft, or other similar paper instrument, then the employer may not
5 combine the amounts in one payment to the court and a separate check,
6 draft, or other similar paper instrument shall be required for each
7 employee payment.

8 Sec. 6. The changes made by this legislative bill apply to any
9 garnishment proceedings instituted on or after January 1, 2019.

10 Sec. 7. This act becomes operative on January 1, 2019.

11 Sec. 8. Original sections 25-1011, 25-1017, 25-1056, and 25-1558,
12 Reissue Revised Statutes of Nebraska, are repealed.