

AMENDMENTS TO LB136

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

3 **Section 1.** Section 25-1030.01, Reissue Revised Statutes of Nebraska,
4 is amended to read:

5 25-1030.01 (1) Upon filing an application for determination of
6 liability of the garnishee, the plaintiff shall give the garnishee and
7 the defendant in the original action notice of the filing thereof and of
8 the time and place of trial thereon. Subject to subsections (2) and (3)
9 of this section, the ~~The~~ notice shall be given within such time and in
10 such manner as the court shall direct.

11 (2) For purposes of this section:

12 (a) Corporate entity means any corporation, limited liability
13 company, limited liability partnership, or series limited liability
14 company or any other corporate entity that is required by the statutes of
15 Nebraska to have a registered agent for service of process in Nebraska;
16 and

17 (b) Corporate entity does not include any financial institution as
18 described in subsection (6) of section 25-1056.

19 (3)(a) If the garnishee is a corporate entity, notice under
20 subsection (1) of this section shall be served upon the location of the
21 corporate entity's registered agent for service of process in this state.

22 (b) If service is unable to be accomplished as provided in
23 subdivision (3)(a) of this section, such notice shall be served in
24 accordance with section 25-509.01.

25 (4) In a case involving a garnishment served upon a corporate entity
26 against wages due to a judgment debtor, the corporate entity shall not be
27 liable as a garnishee under this section unless the plaintiff shows:

1 (a) That service was made in accordance with subdivision (3)(a) of
2 this section; or

3 (b) That service was made in accordance with subdivision (3)(b) of
4 this section and:

5 (i) That a copy of the notice described in subsection (1) of this
6 section was sent to the location of the corporate entity's registered
7 agent;

8 (ii) That the garnishee requested no such copy be sent to such
9 location; or

10 (iii) That the corporate entity does not have a registered agent in
11 this state.

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

14 25-1056 (1) In all cases when a judgment has been entered by any
15 court of record and the judgment creditor or his or her agent or attorney
16 has filed an affidavit setting forth the amount due on the judgment,
17 interest, and costs in the office of the clerk of the court where the
18 judgment has been entered and that he or she has good reason to and does
19 believe that any person, partnership, limited liability company, or
20 corporation, naming him, her, or it, has property of and is indebted to
21 the judgment debtor, the clerk shall issue a summons which shall set
22 forth the amount due on the judgment, interest, and costs as shown in the
23 affidavit and require such person, partnership, limited liability
24 company, or corporation, as garnishee, to answer written interrogatories
25 to be furnished by the plaintiff and to be attached to such summons
26 respecting the matters set forth in section 25-1026. The summons shall be
27 returnable within ten days from the date of its issuance and shall
28 require the garnishee to answer within ten days from the date of service
29 upon him or her. Except when wages are involved, the garnishee shall hold
30 the property of every description and the credits of the defendant in his
31 or her possession or under his or her control at the time of the service

1 of the summons and interrogatories until the further order of the court.
2 If the only property in the possession or under the control of the
3 garnishee at the time of the service of the summons and interrogatories
4 is credits of the defendant and the amount of such credits is not in
5 dispute by the garnishee, then such garnishee shall only hold the credits
6 of the defendant in his or her possession or under his or her control at
7 the time of the service of the summons and interrogatories to the extent
8 of the amount of the judgment, interest, and costs set forth in the
9 summons until further order of the court. When wages are involved, the
10 garnishee shall pay to the employee all disposable earnings exempted from
11 garnishment by statute, and any disposable earnings remaining after such
12 payment shall be retained by the garnishee until further order of the
13 court. Thereafter, the service of the summons and interrogatories and all
14 further proceedings shall be in all respects the same as is provided for
15 in sections 25-1011 and 25-1026 to 25-1031.01 unless inconsistent with
16 this section.

17 (2) If it appears from the answer of the garnishee that the judgment
18 debtor was an employee of the garnishee, that the garnishee otherwise
19 owed earnings to the judgment debtor when the garnishment order was
20 served, or that earnings would be owed within sixty days thereafter and
21 there is not a successful written objection to the order or the answer of
22 the garnishee filed, on application by the judgment creditor, the court
23 shall order that the nonexempt earnings, if any, withheld by the
24 garnishee after service of the order be transferred to the court for
25 delivery to the judgment creditor who is entitled to such earnings.
26 Except for garnishments in support of a person, the payments may be made
27 payable to the judgment creditor or assignee and shall be forwarded to
28 the issuing court to record the judgment payment prior to the court
29 delivering the payment to the judgment creditor or assignee. The court
30 shall, upon application of the judgment creditor, further order that the
31 garnishment is a continuing lien against the nonexempt earnings of the

1 judgment debtor. An order of continuing lien on nonexempt earnings
2 entered pursuant to this section shall require the garnishee to continue
3 to withhold the nonexempt earnings of the judgment debtor for as long as
4 the continuing lien remains in effect.

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

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

14 (a) The underlying judgment is satisfied in full or vacated or
15 expires;

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

18 (c) The judgment creditor releases the garnishment;

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

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

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

24 (g) Ninety days have expired since service of the writ. The judgment
25 creditor may extend the lien for a second ninety-day period by filing
26 with the court a notice of extension during the fifteen days immediately
27 prior to the expiration of the initial lien, and the continuing lien in
28 favor of the initial judgment creditor shall continue for a second
29 ninety-day period.

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

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

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

14 (6)(a) In any case involving service of a garnishment summons on a
15 financial institution where deposits are received within this state, the
16 financial institution shall (i) if its main chartered office is located
17 in this state, designate its main chartered office for the service of
18 summons or (ii) if its main chartered office is located in another state,
19 designate any one of its offices or branches or its agent for service of
20 process in this state for service of summons. The designation of a main
21 chartered office or an office or branch or the agent for service of
22 process under this subdivision shall be made by filing a notice of
23 designation with the Department of Banking and Finance, shall contain the
24 physical address of the main chartered office or the office or branch or
25 the agent for service of process designated, and shall be effective upon
26 placement on the department website. The department shall post the list
27 of such designated main chartered offices and offices or branches or
28 agents for service of process on its website for access by the public. A
29 financial institution may modify or revoke a designation made under this
30 subdivision by filing the modification or revocation with the department.
31 The modification or revocation shall be effective when the department's

1 website has been updated to reflect the modification or revocation,
2 except that the judgment creditor may rely upon the designation that was
3 modified or revoked during the thirty-day period following the effective
4 date of the modification or revocation if the summons is timely served
5 upon the financial institution. The department shall update its website
6 to reflect a filing by a financial institution pursuant to this
7 subdivision or a modification or revocation filed by a financial
8 institution pursuant to this subdivision within ten business days
9 following the filing by the financial institution. The department website
10 shall reflect the date its online records for each financial institution
11 have most recently been updated.

12 (b) If a financial institution where deposits are received has
13 designated its main chartered office or one of its offices or branches or
14 its agent for service of process for the service of summons, service made
15 on the main chartered office or the office or branch or the agent for
16 service of process so designated shall be valid and effective as to any
17 property or credits of the defendant in the possession or control of the
18 main chartered office of the financial institution in this state and any
19 of the financial institution offices or branches located within this
20 state. If service of summons is not made on the main chartered office or
21 the office or branch or the agent for service of process designated by
22 the financial institution, but instead is made at another office or
23 branch of the financial institution located in Nebraska, the financial
24 institution, in its discretion, and without violating any obligation to
25 its customer, may elect to treat the service of summons as valid and
26 effective as to any property or credits of the defendant in the
27 possession or control of the main chartered office of the financial
28 institution in this state and any of the financial institution offices or
29 branches located within this state. In the absence of such an election,
30 the financial institution shall file a statement with the interrogatories
31 that the summons was not served at the financial institution's designated

1 location for receiving service of summons and, therefore, was not
2 processed, and shall provide the address at which the financial
3 institution is to receive service of summons.

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

8 (d) The notice of designation, modification, or revocation shall be
9 made by a financial institution on forms prescribed by the Department of
10 Banking and Finance ~~department~~.

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

15 (7)(a) For purposes of this section:

16 (i) Corporate entity means any corporation, limited liability
17 company, limited liability partnership, or series limited liability
18 company or any other corporate entity that is required by the statutes of
19 Nebraska to have a registered agent for service of process in Nebraska;
20 and

21 (ii) Corporate entity does not include any financial institution
22 described in subsection (6) of this section.

23 (b) In any case involving service of a garnishment summons on a
24 corporate entity against wages due to a judgment debtor from the
25 corporate entity, service shall be made upon the corporate entity in
26 accordance with section 25-509.01 or in a manner mutually agreed upon by
27 the garnishee and judgment creditor.

28 (c) If service is not made upon the corporate entity's registered
29 agent for service of process in this state, the judgment creditor shall
30 send a copy of such summons to the location of the corporate entity's
31 registered agent for service of process in this state unless the

1 corporate entity has requested that no such copy be sent or no such
2 registered agent exists. Proof of compliance with this subdivision (7)(c)
3 is not required for a garnishment to continue.

4 **Sec. 3.** Original sections 25-1030.01 and 25-1056, Reissue Revised
5 Statutes of Nebraska, are repealed.