

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 466

Introduced by DeBoer, 10.

Read first time January 17, 2023

Committee:

- 1 A BILL FOR AN ACT relating to civil procedure; to amend sections
- 2 25-1030.01 and 25-1056, Reissue Revised Statutes of Nebraska; to
- 3 change provisions relating to service of garnishment summons,
- 4 continuing liens, and notices upon corporate garnishees; to define
- 5 terms; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

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

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

8 (2)(a) For purposes of this section, corporate entity means any
9 corporation, limited liability company, limited liability partnership, or
10 series limited liability company or any other corporate entity which is
11 required by the statutes of Nebraska to have a registered agent for
12 service of process in Nebraska.

13 (b) If the garnishee is a corporation, such notice shall be served
14 upon the corporation's registered agent for service of process in this
15 state.

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

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

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

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

1 the issuing court to record the judgment payment prior to the court
2 delivering the payment to the judgment creditor or assignee. The court
3 shall, upon application of the judgment creditor, further order that the
4 garnishment is a continuing lien against the nonexempt earnings of the
5 judgment debtor. An order of continuing lien on nonexempt earnings
6 entered pursuant to this section shall require the garnishee to continue
7 to withhold the nonexempt earnings of the judgment debtor for as long as
8 the continuing lien remains in effect.

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

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

18 (a) The underlying judgment is satisfied in full or vacated or
19 expires;

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

22 (c) The judgment creditor releases the garnishment;

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

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

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

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

1 favor of the initial judgment creditor shall continue for a second
2 ninety-day period.

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

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

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

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

1 agents for service of process on its website for access by the public. A
2 financial institution may modify or revoke a designation made under this
3 subdivision by filing the modification or revocation with the department.
4 The modification or revocation shall be effective when the department's
5 website has been updated to reflect the modification or revocation,
6 except that the judgment creditor may rely upon the designation that was
7 modified or revoked during the thirty-day period following the effective
8 date of the modification or revocation if the summons is timely served
9 upon the financial institution. The department shall update its website
10 to reflect a filing by a financial institution pursuant to this
11 subdivision or a modification or revocation filed by a financial
12 institution pursuant to this subdivision within ten business days
13 following the filing by the financial institution. The department website
14 shall reflect the date its online records for each financial institution
15 have most recently been updated.

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

1 institution in this state and any of the financial institution offices or
2 branches located within this state. In the absence of such an election,
3 the financial institution shall file a statement with the interrogatories
4 that the summons was not served at the financial institution's designated
5 location for receiving service of summons and, therefore, was not
6 processed, and shall provide the address at which the financial
7 institution is to receive service of summons.

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

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

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

19 (7)(a) For purposes of this section, corporate entity means any
20 corporation, limited liability company, limited liability partnership, or
21 series limited liability company or any other corporate entity which is
22 required by the statutes of Nebraska to have a registered agent for
23 service of process in Nebraska, except for any financial institution
24 described in subsection (6) of this section.

25 (b) In any case involving service of a garnishment summons or
26 continuing lien on a corporate entity against wages due to a judgment
27 debtor from the corporate entity, service shall be made by serving the
28 corporate entity's registered agent for service of process in this state.

29 Sec. 3. Original sections 25-1030.01 and 25-1056, Reissue Revised
30 Statutes of Nebraska, are repealed.