

## LEGISLATIVE BILL 420

Approved by the Governor March 29, 1995

Introduced by Lindsay, 9

AN ACT relating to civil procedure; to amend section 25-1056, Revised Statutes Supplement, 1994; to change provisions relating to garnishment; and to repeal the original section.

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

Section 1. Section 25-1056, Revised Statutes Supplement, 1994, is amended to read:

25-1056. (1) In all cases when a judgment has been entered by any court of record and the judgment creditor or his or her agent or attorney has filed an affidavit setting forth the amount due on the judgment, interest, and costs in the office of the clerk of the court where the judgment has been entered and that he or she has good reason to and does believe that any person, partnership, limited liability company, or corporation, naming him, her, or it, has property of and is indebted to the judgment debtor, the clerk shall issue a summons which shall set forth the amount due on the judgment, interest, and costs as shown in the affidavit and require such person, partnership, limited liability company, or corporation, as garnishee, to answer written interrogatories to be furnished by the plaintiff and to be attached to such summons respecting the matters set forth in section 25-1026. The summons shall be returnable within ten days from the date of its issuance and shall require the garnishee to answer within ten days from the date of issuance. Except when wages are involved, the garnishee shall hold the property of every description and the credits of the defendant in his or her possession or under his or her control at the time of the service of the summons and interrogatories until the further order of the court. If the only property in the possession or under the control of the garnishee at the time of the service of the summons and interrogatories is credits of the defendant and the amount of such credits is not in dispute by the garnishee, then such garnishee shall only hold the credits of the defendant in his or her possession or under his or her control at the time of the service of the summons and interrogatories to the extent of the amount of the judgment, interest, and costs set forth in the summons until further order of the court. When wages are involved, the garnishee shall pay to the employee all disposable earnings exempted from garnishment by statute, and any disposable earnings remaining after such payment shall be retained by the garnishee until further order of the court. Thereafter, the service of the summons and interrogatories and all further proceedings shall be in all respects the same as is provided for in sections 25-1011 and 25-1026 to 25-1031.01 unless inconsistent with this section.

(2) If it appears from the answer of the garnishee that the judgment debtor was an employee of the garnishee, that the garnishee otherwise owed earnings to the judgment debtor when the garnishment order was served, or that earnings would be owed within sixty days thereafter and there is not a successful written objection to the order or the answer of the garnishee filed, on application by the judgment creditor, the court shall order that the nonexempt earnings, if any, withheld by the garnishee after service of the order be transferred to the court for payment delivery to the judgment creditor who is entitled to such earnings. Except for garnishments in support of a person, the payments may be made payable to the judgment creditor or assignee and shall be forwarded to the issuing court to record the judgment payment prior to the court delivering the payment to the judgment creditor or assignee. The court shall, upon application of the judgment creditor, further order that the garnishment is a continuing lien against the nonexempt earnings of the judgment debtor. An order of continuing lien on nonexempt earnings entered pursuant to this section shall require the garnishee to continue to withhold the nonexempt earnings of the judgment debtor for as long as the continuing lien remains in effect.

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

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

- (a) The underlying judgment is satisfied in full or vacated or expires;
- (b) The judgment debtor leaves the garnishee's employ for more than sixty days;
- (c) The judgment creditor releases the garnishment;
- (d) The proceedings are stayed by a court of competent jurisdiction, including the United States Bankruptcy Court;
- (e) The judgment debtor has not earned any nonexempt earnings for at least sixty days;
- (f) The court orders that the garnishment be quashed; or
- (g) Ninety days have expired since service of the writ. The judgment creditor may extend the lien for a second ninety-day period by filing with the court a notice of extension within fifteen days of the expiration of the initial lien, and the continuing lien in favor of the initial judgment creditor shall continue for a second ninety-day period.
- (4)(a) To determine priority, garnishments and liens shall rank according to time of service.
- (b) Garnishments, liens, and wage assignments which are not for the support of a person shall be inferior to wage assignments for the support of a person. Garnishments which are not for the support of a person and liens shall be inferior to garnishments for the support of a person.
- (5) Only one order of continuing lien against earnings due the judgment debtor shall be in effect at one time. If an employee's wages are already being garnished pursuant to a continuing lien at the time of service of a garnishment upon an employer, the answer to garnishment interrogatories shall include such information along with the date of termination of such continuing lien and the title of the case from which such garnishment is issued. Except as provided in subsection (4) of this section, a continuing lien obtained pursuant to this section shall have priority over any subsequent garnishment or wage assignment.

Sec. 2. Original section 25-1056, Revised Statutes Supplement, 1994, is repealed.