

As Amended by Senate Committee

Session of 2012

SENATE BILL No. 366

By Committee on Judiciary

2-2

1 AN ACT concerning civil procedure; relating to attachment and
2 garnishment; amending K.S.A. 2011 Supp. 60-736, 60-738, 60-739, 61-
3 3509, 61-3511 and 61-3512 and repealing the existing sections.

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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2011 Supp. 60-736 is hereby amended to read as
7 follows: 60-736. This section shall apply if the garnishment is to attach
8 intangible property other than earnings of the judgment debtor.

9 (a) The answer of the garnishee shall be substantially in compliance
10 with the forms set forth by the judicial council.

11 (b) Within 14 days after service, other than that required pursuant to
12 K.S.A. 40-218, and amendments thereto, upon a garnishee of an order of
13 garnishment the garnishee shall complete the answer in accordance with
14 the instructions accompanying the answer form stating the facts with
15 respect to the demands of the order and ~~file the completed answer with the~~
16 ~~clerk of the court. The clerk shall cause a copy of the answer to be mailed~~
17 ~~promptly send the completed answer~~ to the judgment creditor and
18 judgment debtor at the addresses listed on the answer form. The answer
19 shall be supported by unsworn declaration in the manner set forth on the
20 answer form.

21 Sec. 2. K.S.A. 2011 Supp. 60-738 is hereby amended to read as
22 follows: 60-738. (a) No later than 14 days after the garnishee makes the
23 answer and ~~the clerk or the garnishee~~ sends it to the judgment creditor and
24 judgment debtor, the judgment creditor or judgment debtor, or both, may
25 file a reply disputing any statement in the answer of the garnishee. A copy
26 of the reply shall be sent by the party filing same to the other party, to any
27 other judgment creditors affected and to the garnishee. The party filing the
28 reply shall notify the court and schedule a hearing on the reply to be held
29 within 30 days after filing of the reply.

30 (b) At the hearing, the court shall determine and rule on all issues
31 related to the reply. The burden of proof shall be upon the party filing the
32 reply to disprove the statements of the answer, except that the garnishee
33 shall have the burden of proving offsets or indebtedness claimed to be due
34 from the judgment debtor to the garnishee, or liens asserted by the
35 garnishee against personal property of the judgment debtor. The provisions
36 of K.S.A. 60-719, and amendments thereto, relating to offsets claimed by

1 the garnishee shall be applicable to lawsuits filed pursuant to the code of
2 civil procedure for limited actions.

3 Sec. 3. K.S.A. 2011 Supp. 60-739 is hereby amended to read as
4 follows: 60-739. (a) ~~The court shall direct the garnishee to pay to the court~~
5 ~~The garnishee shall~~ **The court shall direct the garnishee to pay to the**
6 **judgment creditor** such amount that the garnishee is holding, as indicated
7 by the answer, or such lesser amount as warranted, if:

8 (1) The garnishment has attached to *intangible* property other than
9 earnings of the judgment debtor;

10 (2) fourteen days have passed since receipt of the answer of the
11 garnishee by the ~~court~~ **judgment creditor**; and

12 (3) no reply to the answer has been filed.

13 (b) ~~The court judgment creditor shall promptly refund to the~~
14 ~~judgment debtor any overpayment of the claim. The garnishee may release~~
15 ~~the funds, credits or indebtedness that have been attached pursuant to the~~
16 ~~order of garnishment if no order to pay the court has been received within~~
17 ~~60 days following the receipt of the answer of the garnishee by the court.~~
18 **The garnishee may release the funds, credits or indebtedness that have**
19 **been attached pursuant to the order of garnishment if no order to pay**
20 **the judgment creditor has been received within 60 days following the**
21 **receipt of the answer of the garnishee by the judgment creditor.**

22 (c) *The garnishee shall not be liable to any judgment creditor or*
23 *judgment debtor and shall not be assessed any penalty by reason of any*
24 *action taken in good faith by the garnishee in accordance with the*
25 *provisions of article 7 of chapter 60 of the Kansas Statutes Annotated, and*
26 *amendments thereto.*

27 Sec. 4. K.S.A. 2011 Supp. 61-3509 is hereby amended to read as
28 follows: 61-3509. This section shall apply if the garnishment is to attach
29 intangible property other than earnings of the judgment debtor.

30 Within 14 days after service upon a garnishee of an order of
31 garnishment the garnishee shall complete the answer in accordance with
32 the instructions accompanying the answer form stating the facts with
33 respect to the demands of the order and ~~file the completed answer with the~~
34 ~~clerk of the court. The clerk shall cause a copy of the answer to be mailed~~
35 ~~promptly send the completed answer~~ to the judgment creditor and
36 judgment debtor at the addresses listed on the answer form. The answer
37 shall be supported by unsworn declaration in the manner set forth on the
38 answer form.

39 Sec. 5. K.S.A. 2011 Supp. 61-3511 is hereby amended to read as
40 follows: 61-3511. (a) No later than 14 days after the garnishee makes the
41 answer and ~~the clerk or the garnishee~~ sends it to the judgment creditor and
42 judgment debtor, the judgment creditor or judgment debtor, or both, may
43 file a reply disputing any statement in the answer of the garnishee. A copy

1 of the reply shall be sent by the party filing same to the other party, to any
2 other judgment creditors affected and to the garnishee. The party filing the
3 reply shall notify the court and schedule a hearing on the reply to be held
4 within 30 days after filing of the reply.

5 (b) At the hearing, the court shall determine and rule on all issues
6 related to the reply. The burden of proof shall be upon the party filing the
7 reply to disprove the statements of the answer, except that the garnishee
8 shall have the burden of proving offsets or indebtedness claimed to be due
9 from the judgment debtor to the garnishee, or liens asserted by the
10 garnishee against personal property of the judgment debtor. The provisions
11 of K.S.A. 60-719, and amendments thereto, relating to offsets claimed by
12 the garnishee shall be applicable to lawsuits filed pursuant to the code of
13 civil procedure for limited actions.

14 Sec. 6. K.S.A. 2011 Supp. 61-3512 is hereby amended to read as
15 follows: 61-3512. (a) ~~The court shall direct the garnishee to pay to the~~
16 ~~court~~ *Unless otherwise ordered by the court, the garnishee shall* **The court**
17 **shall direct the garnishee to pay to the judgment creditor** such amount
18 that the garnishee is holding, as indicated by the answer, or such lesser
19 amount as warranted, if:

20 (1) The garnishment has attached to *intangible* property other than
21 earnings of the judgment debtor;

22 (2) fourteen days have passed since receipt of the answer of the
23 garnishee by the ~~court~~ *judgment creditor*; and

24 (3) no reply to the answer has been filed.

25 (b) ~~The court judgment creditor shall promptly refund to the~~
26 ~~judgment debtor any overpayment of the claim. The garnishee may release~~
27 ~~the funds, credits or indebtedness that have been attached pursuant to the~~
28 ~~order of garnishment if no order to pay the court has been received within~~
29 ~~60 days following the receipt of the answer of the garnishee by the court.~~
30 **The garnishee may release the funds, credits or indebtedness that have**
31 **been attached pursuant to the order of garnishment if no order to pay**
32 **the judgment creditor has been received within 60 days following the**
33 **receipt of the answer of the garnishee by the judgment creditor.**

34 (c) *The garnishee shall not be liable to any judgment creditor or*
35 *judgment debtor and shall not be assessed any penalty by reason of any*
36 *action taken in good faith by the garnishee in accordance with the*
37 *provisions of article 35 of chapter 61 of the Kansas Statutes Annotated,*
38 *and amendments thereto.*

39 Sec. 7. K.S.A. 2011 Supp. 60-736, 60-738, 60-739, 61-3509, 61-3511
40 and 61-3512 are hereby repealed.

41 Sec. 8. This act shall take effect and be in force from and after its
42 publication in the statute book.