

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. {60-733 and 61-3506 and K.S.A.}
3 2011 Supp. 60-736, 60-738, 60-739, 61-3509, 61-3511 and 61-3512
4 and repealing the existing sections.
5

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

7 {Section 1. K.S.A. 60-733 is hereby amended to read as follows:

8 **60-733. (a) The written direction of a party seeking an order of**
9 **garnishment attaching funds, credits or indebtedness held by a bank,**
10 **savings and loan association, credit union or finance company shall**
11 **state the amount to be withheld, which shall be 110% of the amount of**
12 **the judgment creditor's claim, in the case of prejudgment**
13 **garnishment, or 110% of the amount of the current balance due under**
14 **the judgment, in the case of postjudgment garnishment. The**
15 **garnishee, without prior agreement, may withhold and retain to**
16 **defray the garnishee's costs, an administrative fee of ~~\$10~~\$15 for each**
17 **order of garnishment that attaches funds, credits or indebtedness.**
18 **Such administrative fee shall be in addition to the amount required to**
19 **be withheld under the order for garnishment, except that if the**
20 **amount required to be withheld under the order for garnishment is**
21 **greater than the amount of the funds, credits or indebtedness held by**
22 **a bank, savings and loan association, credit union or finance company,**
23 **the fee shall be deducted from the amount withheld.**

24 (b) All orders of garnishment issued in this state for the purpose
25 of attaching funds, credits or indebtedness held by a bank, savings and
26 loan association, credit union or finance company shall include the
27 judgment debtor's address and tax identification number, if known,
28 and shall specify the amount of funds, credits or indebtedness to be
29 withheld by the garnishee, which shall be 110% of the amount of the
30 judgment creditor's claim or 110% of the amount of the current
31 balance due under the judgment, as stated in the written direction of
32 the party seeking the order.

33 (c) The forms provided by law for an order of garnishment
34 attaching funds, credits or indebtedness held by a bank, savings and

1 **loan association, credit union or finance company shall include the**
2 **following statement:**

3 "If you hold any funds, credits or indebtedness belonging to or owing the judgment
4 debtor, the amount to be withheld by you pursuant to this order of garnishment is not
5 to
6 exceed
7 \$ _____."

8 (amount stated in direction)

9 (d) (1) The forms provided by law for the answer to an order of garnishment
10 attaching funds, credits or indebtedness held by a bank, savings and loan association,
11 credit union or finance company shall include the following statement:

12 "The amount of the funds, credits or indebtedness belonging to or owing the
13 judgment
14 debtor which I shall hold shall not exceed
15 \$ _____."

16 (amount stated in order)

17 (2) The answer shall further include information that such
18 account is owned in joint tenancy with one or more individuals who
19 are not subject to the garnishment, if applicable.

20 (e) If an order of garnishment attaches funds, credits or
21 indebtedness held by a bank, savings and loan association, credit
22 union or finance company and the garnishee holds funds or credits or
23 is indebted to the judgment debtor in two or more accounts, the
24 garnishee may withhold payment of the amount attached from any
25 one or more of such accounts.

26 (f) If an order of garnishment attaches funds, credits or
27 indebtedness held by a bank, savings and loan association, credit
28 union or finance company and the garnishee holds funds or credits or
29 is indebted to the judgment debtor in an account which judgment
30 debtor owns in joint tenancy with one or more individuals who are not
31 subject to the garnishment, the garnishee shall withhold the entire
32 amount sought by the garnishment. Neither the garnishor nor the
33 garnishee shall be liable to the joint owners if the ownership of the
34 funds is later proven not to be the judgment debtor's.

35 (g) No party shall seek an order of garnishment attaching funds,
36 credits or indebtedness held by a bank, savings and loan association,
37 savings bank, credit union or finance company except on good faith
38 belief of the party seeking garnishment that the party to be served
39 with the garnishment order has, or will have, assets of the judgment
40 debtor. Except as provided further, not more than two garnishments
41 shall be issued by a party seeking an order of garnishment applicable
42 to the same claim or claims and against the same judgment debtor in
43 any 30-day period. A judge may order an exception to this subsection

1 **in any case in which the party seeking the garnishment shall in person**
2 **or by attorney: (1) Certify that the garnishment is not for the purpose**
3 **of harassment of the debtor, and (2) state facts demonstrating to the**
4 **satisfaction of the judge that there is reason to believe that the**
5 **garnishee has property or credits of the debtor which are not exempt**
6 **from execution.}**

7 ~~Section 1.~~ **{Sec. 2.}** K.S.A. 2011 Supp. 60-736 is hereby amended to
8 read as follows: 60-736. This section shall apply if the garnishment is to
9 attach intangible property other than earnings of the judgment debtor.

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

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

22 ~~Sec. 2.~~ **{3.}** K.S.A. 2011 Supp. 60-738 is hereby amended to read as
23 follows: 60-738. (a) No later than 14 days after the garnishee makes the
24 answer and ~~the clerk or the garnishee~~ sends it to the judgment creditor and
25 judgment debtor, the judgment creditor or judgment debtor, or both, may
26 file a reply disputing any statement in the answer of the garnishee. A copy
27 of the reply shall be sent by the party filing same to the other party, to any
28 other judgment creditors affected and to the garnishee. The party filing the
29 reply shall notify the court and schedule a hearing on the reply to be held
30 within 30 days after filing of the reply.

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

40 ~~Sec. 3.~~ **{4.}** K.S.A. 2011 Supp. 60-739 is hereby amended to read as
41 follows: 60-739. (a) ~~The court shall direct the garnishee to pay to the court~~
42 ~~The garnishee shall~~ **The court shall direct the garnishee to pay to the**
43 **judgment creditor** such amount that the garnishee is holding, as indicated

1 by the answer, or such lesser amount as warranted, if:

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

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

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

7 (b) The ~~court~~ *judgment creditor* shall promptly refund to the
8 judgment debtor any overpayment of the claim. ~~The garnishee may release
9 the funds, credits or indebtedness that have been attached pursuant to the
10 order of garnishment if no order to pay the court has been received within
11 60 days following the receipt of the answer of the garnishee by the court.~~
12 ***The garnishee may release the funds, credits or indebtedness that have
13 been attached pursuant to the order of garnishment if no order to pay
14 the judgment creditor has been received within 60 days following the
15 receipt of the answer of the garnishee by the judgment creditor.***

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

21 **{Sec. 5. K.S.A. 61-3506 is hereby amended to read as follows: 61-
22 3506. (a) The written direction of a party seeking an order of
23 garnishment attaching funds, credits or indebtedness held by a bank,
24 savings and loan association, credit union or finance company shall
25 state the amount to be withheld, which shall be 110% of the amount of
26 the judgment creditor's claim, in the case of prejudgment
27 garnishment, or 110% of the amount of the current balance due under
28 the judgment, in the case of postjudgment garnishment. The
29 garnishee, without prior agreement, may withhold and retain to
30 defray the garnishee's costs, an administrative fee of ~~\$10~~\$15 for each
31 order of garnishment that attaches funds, credits or indebtedness.
32 Such administrative fee shall be in addition to the amount required to
33 be withheld under the order for garnishment, except that if the
34 amount required to be withheld under the order for garnishment is
35 greater than the amount of the funds, credits or indebtedness held by
36 a bank, savings and loan association, credit union or finance company,
37 the fee shall be deducted from the amount withheld.**

38 (b) All orders of garnishment issued in this state for the purpose
39 of attaching funds, credits or indebtedness held by a bank, savings and
40 loan association, credit union or finance company shall include the
41 judgment debtor's address and tax identification number, if known,
42 and shall specify the amount of funds, credits or indebtedness to be
43 withheld by the garnishee, which shall be 110% of the amount of the

1 judgment creditor's claim or 110% of the amount of the current
2 balance due under the judgment, as stated in the written direction of
3 the party seeking the order.

4 (c) The forms provided by law for an order of garnishment
5 attaching funds, credits or indebtedness held by a bank, savings and
6 loan association, credit union or finance company shall include the
7 following statement:

8 "If you hold any funds, credits or indebtedness belonging to or owing the judgment
9 debtor, the amount to be withheld by you pursuant to this order of garnishment is not
10 to exceed \$_____."

11 (amount stated in direction)

12 (d) (1) The forms provided by law for the answer to an order of
13 garnishment attaching funds, credits or indebtedness held by a bank,
14 savings and loan association, credit union or finance company shall
15 include the following statement:

16 "The amount of the funds, credits or indebtedness belonging to or owing the
17 judgment debtor which I shall hold shall not exceed \$_____."

18 (amount stated in order)

19 (2) The answer shall further include information that such
20 account is owned in joint tenancy with one or more individuals who
21 are not subject to the garnishment, if applicable.

22 (e) If an order of garnishment attaches funds, credits or
23 indebtedness held by a bank, savings and loan association, credit
24 union or finance company and the garnishee holds funds or credits or
25 is indebted to the judgment debtor in two or more accounts, the
26 garnishee may withhold payment of the amount attached from any
27 one or more of such accounts.

28 (f) If an order of garnishment attaches funds, credits or
29 indebtedness held by a bank, savings and loan association, credit
30 union or finance company and the garnishee holds funds or credits or
31 is indebted to the judgment debtor in an account which judgment
32 debtor owns in joint tenancy with one or more individuals who are not
33 subject to the garnishment, the garnishee shall withhold the entire
34 amount sought by the garnishment. Neither the garnishor nor the
35 garnishee shall be liable to the joint owners if the ownership of the
36 funds is later proven not to be the judgment debtor's.

37 (g) No party shall seek an order of garnishment attaching funds,
38 credits or indebtedness held by a bank, savings and loan association,
39 savings bank, credit union or finance company except on good faith
40 belief of the party seeking garnishment that the party to be served
41 with the garnishment order has, or will have, assets of the judgment
42 debtor. Except as provided further, not more than two garnishments
43 shall be issued by a party seeking an order of garnishment applicable

1 to the same claim or claims and against the same judgment debtor in
2 any 30-day period. A judge may order an exception to this subsection
3 in any case in which the party seeking the garnishment shall in person
4 or by attorney: (1) Certify that the garnishment is not for the purpose
5 of harassment of the debtor, and (2) state facts demonstrating to the
6 satisfaction of the judge that there is reason to believe that the
7 garnishee has property or credits of the debtor which are not exempt
8 from execution.}

9 Sec. ~~4~~ {6.} K.S.A. 2011 Supp. 61-3509 is hereby amended to read as
10 follows: 61-3509. This section shall apply if the garnishment is to attach
11 intangible property other than earnings of the judgment debtor.

12 Within 14 days after service 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. ~~5~~ {7.} K.S.A. 2011 Supp. 61-3511 is hereby amended to read as
22 follows: 61-3511. (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
37 the garnishee shall be applicable to lawsuits filed pursuant to the code of
38 civil procedure for limited actions.

39 Sec. ~~6~~ {8.} K.S.A. 2011 Supp. 61-3512 is hereby amended to read as
40 follows: 61-3512. (a) ~~The court shall direct the garnishee to pay to the~~
41 ~~court Unless otherwise ordered by the court, the garnishee shall~~ **The court**
42 **shall direct the garnishee to pay to the judgment creditor** such amount
43 that the garnishee is holding, as indicated by the answer, or such lesser

1 amount as warranted, if:

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

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

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

7 (b) The ~~court~~ *judgment creditor* shall promptly refund to the
8 judgment debtor any overpayment of the claim. ~~The garnishee may release~~
9 ~~the funds, credits or indebtedness that have been attached pursuant to the~~
10 ~~order of garnishment if no order to pay the court has been received within~~
11 ~~60 days following the receipt of the answer of the garnishee by the court.~~
12 ***The garnishee may release the funds, credits or indebtedness that have***
13 ***been attached pursuant to the order of garnishment if no order to pay***
14 ***the judgment creditor has been received within 60 days following the***
15 ***receipt of the answer of the garnishee by the judgment creditor.***

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

21 Sec. ~~7-~~{9.} K.S.A. {60-733 and 61-3506 and K.S.A.} 2011 Supp.
22 60-736, 60-738, 60-739, 61-3509, 61-3511 and 61-3512 are hereby
23 repealed.

24 Sec. ~~8-~~{10.} This act shall take effect and be in force from and after
25 its publication in the statute book.