

3
4 **SENATE BILL No. 236**

5
6 By Committee on Judiciary

7
8 2-5
9

10 AN ACT concerning the code of civil procedure; relating to garnishment;
11 amending K.S.A. 2000 Supp. 60-205 and repealing the existing section;
12 also repealing K.S.A. 60-714, 60-715, 60-716 and 60-720 and K.S.A.
13 2000 Supp. 60-717, 60-718, 60-726 and 60-728 and Forms No. 27 and
14 28 in the appendix of forms following K.S.A. 60-269.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 New Section 1. Garnishment is a procedure whereby the wages,
18 money or intangible property of a person can be seized or attached pur-
19 suant to an order of garnishment issued by the court under the conditions
20 set forth in the order.

21 New Sec. 2. An order of garnishment before judgment may be ob-
22 tained only upon order of a judge of the district court pursuant to the
23 procedure to obtain an order of attachment. No order of garnishment
24 may be obtained before judgment where the property sought to be at-
25 tached is wages earned by the person being garnished.

26 New Sec. 3. (a) As an aid to the collection of a judgment, an order
27 of garnishment may be obtained at any time after 10 days following judg-
28 ment. There is no requirement that an execution first be issued and re-
29 turned unsatisfied.

30 (b) The party requesting a garnishment shall file a request in an in-
31 dividual case or by a master request covering more than one case asking
32 the court to issue an order of garnishment. The request shall designate
33 whether the order of garnishment is to be issued to attach earnings or to
34 attach other property of the judgment debtor. If such party seeks to attach
35 earnings of the judgment debtor to enforce:

36 (1) An order of any court for the support of any person;

37 (2) an order of any court of bankruptcy under chapter 13 of the
38 United States bankruptcy code; or

39 (3) a debt due for any state or federal tax, the direction of the party
40 shall so indicate.

41 No bond is required for an order of garnishment issued after judgment.

42 New Sec. 4. This section shall apply if the garnishment is to attach
43 intangible property other than earnings of the judgment debtor.

1 (a) The order of garnishment shall be substantially in compliance with
2 the forms set forth ~~in the appendix of forms~~ **pursuant to rules or orders**
3 **of the supreme court.**

4 (b) The order of garnishment and the appropriate form for the gar-
5 nishee's answer shall be served on the garnishee in the same manner as
6 process is to be served pursuant to K.S.A. 60-301 through 60-313, and
7 amendments thereto, except that the garnishee may be served by any
8 means provided under K.S.A. 60-301 through 60-313, and amendments
9 thereto, at the garnishee's business or office location and this shall be
10 considered proper service. A copy of the answer form shall be served if
11 the garnishment order is not served electronically. If the order is served
12 prior to a judgment, the order shall also be served on the judgment
13 debtor, if the judgment debtor can be found, except that the order shall
14 not be served on the judgment debtor until after service has been made
15 on the garnishee. Failure to serve the judgment debtor shall not relieve
16 the garnishee from liability under the order.

17 (c) The order of garnishment shall have the effect of attaching:

18 (1) All intangible property, funds, credits or other indebtedness be-
19 longing to or owing the judgment debtor, other than earnings, which is
20 in the possession or under the control of the garnishee, and all such
21 credits and indebtedness due from the garnishee to the judgment debtor
22 at the time of service of the order; and

23 (2) all such personal property coming into the possession or control
24 of the garnishee and belonging to the judgment debtor, and all such
25 credits and indebtedness becoming due to the judgment debtor between
26 the time the order is served on the garnishee and the time the garnishee
27 makes the answer of the garnishee. Where the garnishee is an executor
28 or administrator of an estate in which the judgment debtor is or may
29 become a legatee or distributee thereof, the order of garnishment shall
30 have the effect of attaching and creating a first and prior lien upon any
31 property or funds of such estate to which the judgment debtor is entitled
32 upon distribution of the estate, and such garnishee shall be prohibited
33 from paying over to the judgment debtor any of such property or funds
34 until so ordered by the court from which the order of garnishment was
35 issued.

36 (d) The garnishee, without prior agreement, may withhold and retain
37 to defray the garnishee's costs, an administrative fee of \$10 for each order
38 of garnishment that attaches funds, credits or indebtedness. Such admin-
39 istrative fee shall be in addition to the amount required to be withheld
40 under the order for garnishment, except that if the amount required to
41 be withheld under the order for garnishment is greater than the amount
42 of the funds, credits or indebtedness held by the garnishee, the fee shall
43 be deducted from the amount withheld.

1 New Sec. 5. (a) The written direction of a party seeking an order of
2 garnishment attaching funds, credits or indebtedness held by a bank, sav-
3 ings and loan association, credit union or finance company shall state the
4 amount to be withheld, which shall be 110% of the amount of the judg-
5 ment creditor's claim, in the case of prejudgment garnishment, or 110%
6 of the amount of the current balance due under the judgment, in the
7 case of postjudgment garnishment. The garnishee, without prior agree-
8 ment, may withhold and retain to defray the garnishee's costs, an admin-
9 istrative fee of \$10 for each order of garnishment that attaches funds,
10 credits or indebtedness. Such administrative fee shall be in addition to
11 the amount required to be withheld under the order for garnishment,
12 except that if the amount required to be withheld under the order for
13 garnishment is greater than the amount of the funds, credits or indebt-
14 edness held by a bank, savings and loan association, credit union or fi-
15 nance company, the fee shall be deducted from the amount withheld.

16 (b) All orders of garnishment issued in this state for the purpose of
17 attaching funds, credits or indebtedness held by a bank, savings and loan
18 association, credit union or finance company shall include the judgment
19 debtor's address and tax identification number, if known, and shall specify
20 the amount of funds, credits or indebtedness to be withheld by the gar-
21 nishee, which shall be 110% of the amount of the judgment creditor's
22 claim or 110% of the amount of the current balance due under the judg-
23 ment, as stated in the written direction of the party seeking the order.

24 (c) The forms provided by law for an order of garnishment attaching
25 funds, credits or indebtedness held by a bank, savings and loan associa-
26 tion, credit union or finance company shall include the following
27 statement:

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

31 (amount stated in direction)

32 (d) (1) The forms provided by law for the answer to an order of
33 garnishment attaching funds, credits or indebtedness held by a bank, sav-
34 ings and loan association, credit union or finance company shall include
35 the following statement:

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

39 (amount stated in order)

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

43 (e) If an order of garnishment attaches funds, credits or indebtedness

1 held by a bank, savings and loan association, credit union or finance com-
2 pany and the garnishee holds funds or credits or is indebted to the judg-
3 ment debtor in two or more accounts, the garnishee may withhold pay-
4 ment of the amount attached from any one or more of such accounts.

5 (f) If an order of garnishment attaches funds, credits or indebtedness
6 held by a bank, savings and loan association, credit union or finance com-
7 pany and the garnishee holds funds or credits or is indebted to the judg-
8 ment debtor in an account which judgment debtor owns in joint tenancy
9 with one or more individuals who are not subject to the garnishment, the
10 garnishee shall withhold the entire amount sought by the garnishment.
11 Neither the garnishor nor the garnishee shall be liable to the joint owners
12 if the ownership of the funds is later proven not to be the judgment
13 debtor's.

14 (g) No party shall seek an order of garnishment attaching funds, cred-
15 its or indebtedness held by a bank, savings and loan association, savings
16 bank, credit union or finance company except on good faith belief of the
17 party seeking garnishment that the party to be served with the garnish-
18 ment order has, or will have, assets of the judgment debtor. Except as
19 provided further, not more than two garnishments shall be issued by a
20 party seeking an order of garnishment applicable to the same claim or
21 claims and against the same judgment debtor in any 30-day period. A
22 judge may order an exception to this subsection in any case in which the
23 party seeking the garnishment shall in person or by attorney: (1) Certify
24 that the garnishment is not for the purpose of harassment of the debtor,
25 and (2) state facts demonstrating to the satisfaction of the judge that there
26 is reason to believe that the garnishee has property or credits of the debtor
27 which are not exempt from execution.

28 New Sec. 6. This section shall apply if the garnishment is to attach
29 earnings of the judgment debtor.

30 (a) The order of garnishment shall be substantially in compliance with
31 the forms set forth ~~in the appendix of forms~~ **pursuant to rules or orders**
32 **of the supreme court.**

33 (b) The order of garnishment and the appropriate form for the gar-
34 nishee's answer shall be served on the garnishee in the same manner as
35 process is to be served pursuant to K.S.A. 60-301 through 60-313, and
36 amendments thereto, except that the garnishee may be served by any
37 means provided under K.S.A. 60-301 through 60-313, and amendments
38 thereto, at the garnishee's business or office location and this shall be
39 considered proper service. A copy of the answer form shall be served if
40 the garnishment order is not served electronically. If the party having
41 requested the garnishment is notified by the garnishee that the judgment
42 debtor has never been employed by the garnishee or the judgment
43 debtor's employment has been terminated, the party seeking the garnish-

1 ment shall forthwith file a release with the clerk of the court of such
2 garnishment.

3 (c) The order of garnishment shall have the effect of attaching the
4 nonexempt portion of the judgment debtor's earnings for all pay periods
5 which end while the order is in effect. The order shall remain in effect
6 until either of the following occur, whichever is sooner: (1) The judgment
7 is paid; or (2) the garnishment is released. The party for whom the gar-
8 nishment is issued shall file a release with the clerk of the court upon
9 satisfaction of the judgment and provide a copy thereof to the defendant
10 and garnishee. Nonexempt earnings are earnings which are not exempt
11 from wage garnishment pursuant to K.S.A. 60-2310, and amendments
12 thereto. Computation of the nonexempt portion of the judgment debtor's
13 wages for the pay period or periods covered by the order shall be made
14 in accordance with the directions accompanying the garnishee's answer
15 form, and a written explanation of the garnishee's computations shall be
16 furnished to the judgment debtor with each paycheck from which earn-
17 ings are withheld pursuant to the order of garnishment. The order of
18 garnishment shall also constitute an order of the court directing the gar-
19 nishee to pay to the judgment creditor all earnings which are to be with-
20 held by the garnishee under the order of garnishment as more particularly
21 provided in the answer of the garnishee.

22 (d) From income due the judgment debtor, the garnishee may with-
23 hold and retain to defray the garnishee's costs, an administrative fee of
24 \$10 for each pay period for which income is withheld, not to exceed \$20
25 for each 30 day period for which income is withheld, whichever is less.
26 Such administrative fee shall be in addition to the amount required to be
27 withheld under the order for garnishment. If the addition of this fee
28 causes the total amount withheld to exceed the restrictions imposed by
29 subsection (b) of K.S.A. 60-2310, and amendments thereto, the fee shall
30 be deducted from the amount withheld.

31 (e) For any continuing garnishment, the party having requested the
32 garnishment shall maintain an accounting and record of the judgment
33 reflecting thereon all garnishment proceeds received and applied, all in-
34 terest accrued thereon, and any and all credits applied in satisfaction
35 thereof, and the remaining unsatisfied balance of such judgment. The
36 party requesting the garnishment shall produce a copy of such accounting
37 and record upon request of the court.

38 New Sec. 7. (a) Immediately following the time the order of gar-
39 nishment is served on the garnishee, the party seeking the garnishment
40 shall send a notice to the judgment debtor in any reasonable manner,
41 notifying the judgment debtor:

42 (1) That a garnishment order has been issued against the judgment
43 debtor and the effect of such order;

1 (2) of the judgment debtor's right to assert any claim of exemption
2 allowed under the law with respect to a garnishment against property
3 other than earnings or of the judgment debtor's right to object to the
4 calculation of exempt and nonexempt earnings with respect to a garnish-
5 ment against the earnings of the debtor; and

6 (3) of the judgment debtor's right to a hearing on such claim or ob-
7 jection. The notice shall be substantially in compliance with the form set
8 forth ~~in the appendix of forms~~ **pursuant to rules or orders of the su-**
9 **preme court**, and shall contain a description of the exemptions that are
10 applicable to garnishments and the procedure by which the judgment
11 debtor can assert any claim of exemption.

12 (b) If the judgment debtor requests a hearing to assert any claim of
13 exemption, the request shall be filed no later than 10 days following the
14 date the notice is served on the judgment debtor. If a hearing is requested,
15 the hearing shall be held by the court no sooner than five days nor later
16 than 10 days after the request is filed. At the time the request for hearing
17 is filed, the judgment debtor shall obtain from the clerk or court the date
18 and time for the hearing which shall be noted on the request form. Im-
19 mediately after the request for hearing is filed, the judgment debtor shall
20 hand-deliver to the party seeking the garnishment or such party's attorney,
21 if the party is represented by an attorney, or mail to the party seeking the
22 garnishment or such party's attorney, if the party is represented by an at-
23 torney, by first-class mail at the party seeking the garnishment or such
24 party's attorney's last known address, a copy of the request for hearing.

25 (c) If a hearing is held, the judgment debtor shall have the burden
26 of proof to show that some or all of the property subject to the garnish-
27 ment is exempt, and the court shall enter an order determining the ex-
28 emption and such other order or orders as is appropriate.

29 New Sec. 8. This section shall apply if the garnishment is to attach
30 intangible property other than earnings of the judgment debtor.

31 (a) The answer of the garnishee shall be substantially in compliance
32 with the forms set forth ~~in the appendix of forms~~ **pursuant to rules or**
33 **orders of the supreme court**.

34 (b) Within 10 days after service upon a garnishee of an order of gar-
35 nishment the garnishee shall complete the answer in accordance with the
36 instructions accompanying the answer form stating the facts with respect
37 to the demands of the order and file the completed answer with the clerk
38 of the court. The clerk shall cause a copy of the answer to be mailed
39 promptly to the judgment creditor and judgment debtor at the addresses
40 listed on the answer form. The answer shall be supported by unsworn
41 declaration in the manner set forth on the answer form.

42 New Sec. 9. This section shall apply if the garnishment is to attach
43 earnings of the judgment debtor.

1 (a) The answer of the garnishee shall be substantially in compliance
2 with the forms set forth ~~in the appendix of forms~~ **pursuant to rules or**
3 **orders of the supreme court.**

4 (b) Within 15 days following the end of each month, the garnishee
5 shall complete the answer in accordance with the instructions accompa-
6 nying the answer form for all pay periods ending during the month and
7 send the completed answer to each judgment creditor and judgment
8 debtor at the addresses listed on the answer form. The garnishee shall
9 designate on the answer in the space provided on the answer form the
10 name and case number for each judgment creditor who has a garnishment
11 order in effect for the same debtor at the end of each month and the
12 amount that is due each judgment creditor under the garnishment in
13 accordance with the instructions accompanying the answer form. Only
14 one answer needs to be completed for each judgment debtor by the gar-
15 nishee and the garnishee may duplicate the completed answer in any
16 manner the garnishee desires for distribution to each judgment creditor
17 and judgment debtor. The answer shall be supported by unsworn dec-
18 laration in the manner set forth on the answer form.

19 (c) If there are other liens against the judgment debtor's earnings which
20 by law have priority over garnishments, the garnishee shall so indicate on
21 the answer. In such event, the garnishment shall remain in effect but no
22 earnings of the debtor shall be withheld under the garnishment order unless
23 and until all of the other liens having priority are released or satisfied or the
24 earnings being withheld under all of such liens are less than the amount
25 which is exempt under K.S.A. 60-2310, and amendments thereto.

26 New Sec. 10. (a) No later than 10 days after the garnishee makes the
27 answer and the clerk or the garnishee sends it to the judgment creditor
28 and judgment debtor, the judgment creditor or judgment debtor, or both,
29 may file a reply disputing any statement in the answer of the garnishee.
30 A copy of the reply shall be sent by the party filing same to the other
31 party, to any other judgment creditors affected and to the garnishee. The
32 party filing the reply shall notify the court and schedule a hearing on the
33 reply to be held within 30 days after filing of the reply.

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

43 New Sec. 11. If the garnishment is to attach property other than

1 earnings of the judgment debtor, after 10 days following receipt of the
2 answer of the garnishee by the court, and no reply to the answer has been
3 filed, the court shall direct the garnishee to pay to the court such amount
4 that the garnishee is holding as indicated by the answer, or such lesser
5 amount if the circumstances warrant. If the garnishee is holding property
6 other than money, the provisions of K.S.A. 60-701 *et seq.*, and amend-
7 ments thereto, relating to attachment shall be applicable. If through gar-
8 nishment, the claim is overpaid to the court, the court shall promptly
9 refund to the judgment debtor any such overpayment.

10 New Sec. 12. This section shall apply if the garnishment is to attach
11 earnings of the judgment debtor. If no reply is made to the answer of
12 garnishee within 10 days following the date the garnishee has completed
13 the answer, the garnishee shall promptly thereafter pay the earnings with-
14 held as indicated on the answer to all judgment creditors designated on
15 the answer in the amount due each as indicated on the answer, unless
16 the garnishee receives prior to such payment an order of the court to the
17 contrary. If any judgment creditor receives more than they are entitled
18 to, that judgment creditor shall promptly pay the excess amount pro-rata
19 to the other judgment creditors designated on the answer, or if no such
20 other judgment creditors are designated, the judgment creditor shall
21 promptly pay the excess amount to the judgment debtor.

22 New Sec. 13. If the garnishee fails to answer within the time and
23 manner specified in the order of garnishment, the judgment creditor may
24 file a motion and shall send a copy of the motion to the garnishee and
25 the judgment debtor in the manner allowed under K.S.A. 60-205, and
26 amendments thereto. At the hearing on the motion, the court may grant
27 judgment against the garnishee for the amount of the judgment creditor's
28 judgment or claim against the judgment debtor or for such other amount
29 as the court deems reasonable and proper, and for the expenses and
30 attorney fees of the judgment creditor. If the claim of the plaintiff has
31 not been reduced to judgment, the liability of the garnishee shall be
32 limited to the judgment ultimately rendered against the judgment debtor.

33 New Sec. 14. If after the time the garnishee is to make payment of
34 funds or property held under a garnishment, the garnishee fails or refuses
35 to pay or deliver property to the judgment creditor, the judgment creditor
36 may file a motion and shall send a copy of the motion to the garnishee
37 and the judgment debtor in the manner allowed under K.S.A. 60-205,
38 and amendments thereto. At the hearing on the motion, the court may
39 find the garnishee in contempt and punish the garnishee by a fine or may
40 enter judgment against the garnishee for such amount as the court deems
41 reasonable and proper, including the expenses and attorney fees of the
42 judgment creditor.

43 New Sec. 15. The forms ~~contained in this appendix of garnishment~~

1 ~~forms~~ **set forth pursuant to rules or orders of the supreme court** are
2 sufficient under this act and are intended to indicate the simplicity and
3 brevity of statement which this act contemplates.

4 ~~APPENDIX OF FORMS INTRODUCTORY~~

5 ~~The following forms are intended for illustration only, but they are~~
6 ~~expressly declared by section 15, and amendments thereto, to be~~
7 ~~sufficient.~~

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1 New Sec. 16. The provisions of sections 1 through 15, and amend-
2 ments thereto, shall be part of and supplemental to the code of civil
3 procedure.

4 Sec. 17. K.S.A. 2000 Supp. 60-205 is hereby amended to read as
5 follows: 60-205. The method of service and filing of pleadings and other
6 papers as provided in this section shall constitute sufficient service and
7 filing in all civil actions and special proceedings but they shall be alter-
8 native to, and not in restriction of, different methods specifically provided
9 by law.

10 (a) *When required.* Except as otherwise provided in this chapter, the
11 following shall be served upon each of the parties: Every order required
12 by its terms to be served; every pleading subsequent to the original pe-
13 tition, unless the court otherwise orders because of numerous defendants;
14 every paper relating to disclosure of expert testimony or discovery re-
15 quired to be served upon a party, unless the court otherwise orders; every
16 written motion other than one which may be heard *ex parte*; and every
17 written notice, appearance, demand, offer of judgment, designation of
18 record on appeal and similar paper. No service need be made on parties
19 in default for failure to appear except that pleadings asserting new or
20 additional claims for relief against them shall be served upon them in the
21 manner provided for service of summons in article 3 of chapter 60.

22 (b) *How made.* Whenever under this article service is required or
23 permitted to be made upon a party represented by an attorney the service
24 shall be made upon the attorney unless service upon the party is ordered
25 by the court. Service upon the attorney or upon a party shall be made by:
26 (1) Delivering a copy to the attorney or a party; (2) mailing it to the
27 attorney or a party at the last known address; (3) if no address is known,
28 by leaving it with the clerk of the court; or (4) sending or transmitting to
29 such attorney a copy by telefacsimile communication. For the purposes
30 of this subsection, "Delivery of a copy" means: Handing it to the attorney
31 or to the party; leaving it at the attorney's or party's office with the ~~clerk~~
32 ~~or other~~ person in charge thereof or, if there is no one in charge, leaving
33 it in a conspicuous place therein; or, if the attorney's or party's office is
34 closed or the person to be served has no office, leaving it at the attorney's
35 or party's dwelling house or usual place of abode with some person of
36 suitable age and discretion then residing therein. Service by mail is com-
37 plete upon mailing. Service by telefacsimile communication is complete
38 upon receipt of a confirmation generated by the transmitting machine.

39 (c) *Numerous defendants.* In any action in which there are unusually
40 large numbers of defendants, the court, upon motion or of its own initia-
41 tive, may order that services of the pleadings of the defendants and replies
42 thereto need not be made as between the defendants and that any cross-
43 claim, counterclaim or matter constituting an avoidance or affirmative

1 defense contained therein shall be deemed to be denied or avoided by
2 all other parties and that the filing of any such pleading and service
3 thereof upon the plaintiff constitutes due notice of it to the parties. A
4 copy of every such order shall be served upon the parties in such manner
5 and form as the court directs.

6 (d) *Filing.* (1) Interrogatories, depositions other than those taken un-
7 der K.S.A. 60-227 and amendments thereto, disclosures of expert testi-
8 mony under K.S.A. 60-226 and amendments thereto and discovery re-
9 quests or responses under K.S.A. 60-234 or 60-236, and amendments
10 thereto, shall not be filed except on order of the court or until used in a
11 trial or hearing, at which time the documents shall be filed.

12 (2) A party serving discovery requests or responses under K.S.A. 60-
13 233, 60-234 or 60-236, and amendments thereto, or disclosures of expert
14 testimony under K.S.A. 60-226 and amendments thereto, shall file with
15 the court a certificate stating what document was served, when and upon
16 whom.

17 (3) All other papers filed after the petition and required to be served
18 upon a party, shall be filed with the court either before service or within
19 a reasonable time thereafter.

20 (e) *Filing with the court defined.* The filing of pleadings and other
21 papers with the court as required by this article shall be made by filing
22 them with the clerk of the court. In accordance with K.S.A. 60-271 and
23 amendments thereto and supreme court rules, pleadings and other papers
24 may be filed by telefacsimile communication. The judge may permit the
25 papers to be filed with the judge, in which event the judge shall note
26 thereon the filing date and forthwith transmit them to the office of the
27 clerk.

28 Sec. 18. K.S.A. 60-714, 60-715, 60-716 and 60-720 and K.S.A. 2000
29 Supp. 60-205, 60-717, 60-718, 60-726 and 60-728 and Forms No. 27 and
30 28 in the appendix of forms following K.S.A. 60-269 are hereby repealed.

31 Sec. 19. This act shall take effect and be in force from and after its
32 publication in the statute book.

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