

**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 pay to the judgment creditor* such amount that the  
6 garnishee is holding, as indicated by the answer, or such lesser amount as  
7 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 (c) *The garnishee shall not be liable to any judgment creditor or*  
19 *judgment debtor and shall not be assessed any penalty by reason of any*  
20 *action taken in good faith by the garnishee in accordance with the*  
21 *provisions of article 7 of chapter 60 of the Kansas Statutes Annotated, and*  
22 *amendments thereto.*

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

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

35 Sec. 5. K.S.A. 2011 Supp. 61-3511 is hereby amended to read as  
36 follows: 61-3511. (a) No later than 14 days after the garnishee makes the  
37 answer and ~~the clerk or the garnishee~~ sends it to the judgment creditor and  
38 judgment debtor, the judgment creditor or judgment debtor, or both, may  
39 file a reply disputing any statement in the answer of the garnishee. A copy  
40 of the reply shall be sent by the party filing same to the other party, to any  
41 other judgment creditors affected and to the garnishee. The party filing the  
42 reply shall notify the court and schedule a hearing on the reply to be held  
43 within 30 days after filing of the reply.

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

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

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

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

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

20 (b) ~~The court judgment creditor shall promptly refund to the~~  
21 ~~judgment debtor any overpayment of the claim. The garnishee may release~~  
22 ~~the funds, credits or indebtedness that have been attached pursuant to the~~  
23 ~~order of garnishment if no order to pay the court has been received within~~  
24 ~~60 days following the receipt of the answer of the garnishee by the court.~~

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

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

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