

HOUSE Substitute for SENATE BILL No. 234

AN ACT concerning civil procedure; relating to garnishment; amending K.S.A. 60-734, 60-737, 60-740, 61-3507 and 61-3510 and repealing the existing sections.

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

Section 1. K.S.A. 60-734 is hereby amended to read as follows: 60-734. This section ~~shall~~ *must* apply if the garnishment is to attach earnings of the judgment debtor.

(a) The order of garnishment ~~shall~~ *must* be substantially in compliance with the forms set forth by the judicial council.

(b) The order of garnishment and the appropriate form for the garnishee's answer ~~shall~~ *must* be served on the garnishee in the same manner as process is to be served pursuant to K.S.A. 60-301 through 60-313, and amendments thereto, ~~except that the garnishee may be served by any means provided under K.S.A. 60-301 through 60-313, and amendments thereto,~~ at the garnishee's business or office location and this ~~shall~~ *must* be considered proper service. A copy of the answer form ~~shall~~ *must* be served if the garnishment order is not served electronically. If the party having requested the garnishment is notified by the garnishee that the judgment debtor has never been employed by the garnishee or the judgment debtor's employment has been terminated, the party seeking the garnishment ~~shall~~ *must* forthwith file a release with the clerk of the court of such garnishment.

(c) The order of garnishment ~~shall~~ *must* have the effect of attaching the nonexempt portion of the judgment debtor's earnings for all pay periods which end while the order is in effect. The order ~~shall~~ *must* remain in effect until either of the following occur, whichever is sooner: (1) The judgment is paid; or (2) the garnishment is released. The party for whom the garnishment is issued ~~shall~~ *must* file a release with the clerk of the court upon satisfaction of the judgment and provide a copy thereof to the defendant and garnishee. Nonexempt earnings are earnings which are not exempt from wage garnishment pursuant to K.S.A. 60-2310, and amendments thereto. Computation of the nonexempt portion of the judgment debtor's wages for the pay period or periods covered by the order ~~shall~~ *must* be made in accordance with the directions accompanying the garnishee's answer form, ~~and a written explanation of the garnishee's computations shall be furnished to the judgment debtor with each pay check from which earnings are withheld pursuant to the order of garnishment.~~ The order of garnishment ~~shall~~ *must* also constitute an order of the court directing the garnishee to pay to the judgment creditor all earnings which are to be withheld by the garnishee under the order of garnishment as more particularly provided in the answer of the garnishee. *A party or the court may request a written explanation of the garnishee's computations of earnings withheld during any pay period and the explanation must be submitted by affidavit to all parties and the court within 14 days after such request. Service of the request must be in the same manner as process is to be served pursuant to K.S.A. 60-301 through 60-313, and amendments thereto.*

(d) ~~Except as provided further, from income due the judgment debtor, the garnishee may withhold and retain to defray the garnishee's costs, an administrative fee of \$10 for each pay period for which income is withheld, not to exceed \$20 for each 30 day period for which income is withheld, whichever is less. From income due the judgment debtor, which is child support, the garnishee may withhold and retain to defray the garnishee's costs, an administrative fee of \$10 for each 30 day period for which income is withheld.~~ Such administrative fee ~~shall~~ *must* be in addition to the amount required to be withheld under the order for garnishment. If the addition of this fee causes the total amount withheld to exceed the restrictions imposed by subsection (b) of K.S.A. 60-2310, and amendments thereto, the fee ~~shall~~ *must* be deducted from the amount withheld.

(e) *The party having requested the garnishment must provide the garnishee the unsatisfied balance of the judgment at the time of issuance of the order of garnishment.*

~~(f)~~ (f) For any continuing garnishment, the party having requested the garnishment ~~shall~~ *must* maintain an accounting and record of the judgment reflecting thereon all garnishment proceeds received and applied, all interest accrued thereon, and any and all credits applied in satisfaction thereof, and the remaining unsatisfied balance of such judgment. The party requesting the garnishment ~~shall~~ *must* produce a copy

of such accounting and record upon request of the court. *The garnishee may request in writing by first class mail the unsatisfied balance from the judgment creditor or, if represented by an attorney, such request may also be by facsimile or electronic mail with read receipt confirmation. If the garnishee fails to receive a response within seven days following the request, the garnishee may submit a written statement to the judgment creditor or, if represented, to the judgment creditor's attorney, in the same fashion as the original request, advising that the garnishee intends to stop withholding earnings pursuant to the garnishment order 14 days following the date of the statement unless the garnishee receives written notice of objection from the judgment creditor or judgment creditor's attorney, as well as the requested unsatisfied balance. If no objection is timely received by the garnishee, the garnishee will thereafter have no duty to withhold earnings.*

Sec. 2. K.S.A. 60-737 is hereby amended to read as follows: 60-737. This section ~~shall~~ *must* apply if the garnishment is to attach earnings of the judgment debtor.

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

(b) Within ~~15~~ *14* days following the ~~end of each month~~ *date of service upon a garnishee of an initial order of garnishment*, the garnishee ~~shall~~ *must* complete the answer in accordance with the instructions accompanying the answer form ~~for all pay periods ending during the month~~ and send the completed answer to each judgment creditor and judgment debtor at the addresses listed on the answer form. The garnishee ~~shall~~ *must* designate on the answer in the space provided on the answer form the name and case number for each judgment creditor who has a garnishment order in effect for the same debtor ~~at the end of each month~~ and the amount that is due each judgment creditor under the garnishment in accordance with the instructions accompanying the answer form. Only one answer needs to be completed for each judgment debtor by the garnishee and the garnishee may duplicate the completed answer in any manner the garnishee desires for distribution to each judgment creditor and judgment debtor. The answer ~~shall~~ *must* be supported by unsworn declaration in the manner set forth on the answer form. *Once the garnishee has distributed the answer to the initial order of garnishment, no further answer is required. A party or the court may request a written explanation of the garnishee's computations of earnings withheld during any pay period, and the explanation must be submitted by affidavit within 14 days after such request. Service of the request must be in the same manner as process is to be served pursuant to K.S.A. 61-3001 through 61-3006, and amendments thereto.*

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

Sec. 3. K.S.A. 60-740 is hereby amended to read as follows: 60-740. This section ~~shall~~ *must* apply if the garnishment is to attach earnings of the judgment debtor. If no reply is made to the answer of garnishee within 10 days following the date the garnishee has completed the answer, the garnishee ~~shall~~ *must* promptly thereafter pay the earnings withheld as indicated on the answer to all judgment creditors designated on the answer in the amount due each as indicated on the answer, *and thereafter continue to pay the earnings withheld as they are withheld*, unless the garnishee receives prior to such payment an order of the court to the contrary. If any judgment creditor receives more than they are entitled to, that judgment creditor ~~shall~~ *must* promptly ~~pay~~ *return* the excess amount *to the garnishee for distribution* pro-rata to the other judgment creditors designated on the answer, or if no such other judgment creditors are designated, the ~~judgment creditor shall~~ *garnishee must* promptly pay the excess amount to the judgment debtor.

Sec. 4. K.S.A. 61-3507 is hereby amended to read as follows: 61-

3507. This section ~~shall~~ *must* apply if the garnishment is to attach earnings of the judgment debtor.

(a) The order of garnishment and the appropriate form for the garnishee's answer ~~shall~~ *must* be served on the garnishee in the same manner as process is to be served pursuant to K.S.A. 61-3001 through 61-3006, and amendments thereto ~~except that the garnishee may be served by any means provided under K.S.A. 61-3001 through 61-3006, and amendments thereto,~~ at the garnishee's business or office location and this ~~shall~~ *must* be considered proper service. A copy of the answer form ~~shall~~ *must* be served if the garnishment order is not served electronically. If the party having requested the garnishment is notified by the garnishee that the judgment debtor has never been employed by the garnishee or the judgment debtor's employment has been terminated, the party seeking the garnishment ~~shall~~ *must* forthwith file a release with the clerk of the court of such garnishment.

(b) The order of garnishment ~~shall~~ *must* have the effect of attaching the nonexempt portion of the judgment debtor's earnings for all pay periods which end while the order is in effect. The order ~~shall~~ *must* remain in effect until either of the following occur, whichever is sooner: (1) The judgment is paid; or (2) the garnishment is released. The party for whom the garnishment is issued ~~shall~~ *must* file a release with the clerk of the court upon satisfaction of the judgment and provide a copy thereof to the defendant and garnishee. Nonexempt earnings are earnings which are not exempt from wage garnishment pursuant to K.S.A. 60-2310, and amendments thereto. Computation of the nonexempt portion of the judgment debtor's wages for the pay period or periods covered by the order ~~shall~~ *must* be made in accordance with the directions accompanying the garnishee's answer form, ~~and a written explanation of the garnishee's computations shall be furnished to the judgment debtor with each paycheck from which earnings are withheld~~ pursuant to the order of garnishment. The order of garnishment ~~shall~~ *must* also constitute an order of the court directing the garnishee to pay to the judgment creditor all earnings which are to be withheld by the garnishee under the order of garnishment as more particularly provided in the answer of the garnishee. *A party or the court may request a written explanation of the garnishee's computations of earnings withheld during any pay period and the explanation must be submitted by affidavit to all parties and the court within 14 days after such request. Service of the request must be in the same manner as process is to be served pursuant to K.S.A. 61-3001 through 61-3006, and amendments thereto.*

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

(d) *The party having requested the garnishment must provide the garnishee the unsatisfied balance of the judgment at the time of issuance of the order of garnishment.*

~~(d)~~ (e) For any continuing garnishment, the party having requested the garnishment ~~shall~~ *must* maintain an accounting and record of the judgment reflecting thereon all garnishment proceeds received and applied, all interest accrued thereon, and any and all credits applied in satisfaction thereof, and the remaining unsatisfied balance of such judgment. The party requesting the garnishment ~~shall~~ *must* produce a copy of such accounting and record upon request of the court. *The garnishee may request, in writing by first class mail, an unsatisfied balance from the judgment creditor or, if represented by an attorney, such request may also be by facsimile or electronic mail with read receipt confirmation. If the garnishee fails to receive a response, within 7 days following the request, the garnishee may submit a written statement to the judgment creditor or, if represented, to the judgment creditor's attorney in the same fashion as the original request, advising that the garnishee intends to stop withholding earnings pursuant to the garnishment order 14 days following the date of the statement unless the garnishee receives written notice*

of objection from the judgment creditor or judgment creditor's attorney as well as the requested unsatisfied balance. If no objection is timely received by the garnishee, the garnishee will thereafter have no duty to withhold earnings.

Sec. 5. K.S.A. 61-3510 is hereby amended to read as follows: 61-3510. This section ~~shall~~ *must* apply if the garnishment is to attach earnings of the judgment debtor.

(a) Within ~~15~~ 14 days following the ~~end of each month~~ *date of service upon a garnishee of an initial order of garnishment*, the garnishee ~~shall~~ *must* complete the answer in accordance with the instructions accompanying the answer form ~~for all pay periods ending during the month~~ and send the completed answer to each judgment creditor and judgment debtor at the addresses listed on the answer form. The garnishee ~~shall~~ *must* designate on the answer in the space provided on the answer form the name and case number for each judgment creditor who has a garnishment order in effect for the same debtor ~~at the end of each month~~ and the amount that is due each judgment creditor under the garnishment in accordance with the instructions accompanying the answer form. Only one answer needs to be completed for each judgment debtor by the garnishee and the garnishee may duplicate the completed answer in any manner the garnishee desires for distribution to each judgment creditor and judgment debtor. The answer ~~shall~~ *must* be supported by unsworn declaration in the manner set forth on the answer form. *Once the garnishee has distributed the answer to the initial order of garnishment, no further answer is required. A party or the court may request a written explanation of the garnishee's computations of earnings withheld during any pay period and the explanation must be submitted by affidavit to all parties and the court within 14 days after such request. Service of the request must be in the same manner as process is to be served pursuant to K.S.A. 61-3001 through 61-3006, and amendments thereto.*

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

Sec. 6. K.S.A. 60-734, 60-737, 60-740, 61-3507 and 61-3510 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.