

ASSEMBLY BILL NO. 401—ASSEMBLYMAN SHERER
(BY REQUEST)

MARCH 24, 2005

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to remedies.
(BDR 3-502)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets **[omitted-material]** is material to be omitted.

AN ACT relating to remedies; providing that the sheriff must deliver a writ of garnishment by personal service to the garnishee defendant or his employee or agent; providing that the time limitation for a garnishee to answer interrogatories is tolled for any period during which the plaintiff and defendant have entered into negotiations for settlement; authorizing a court to order a garnishee to appear for the purpose of answering interrogatories; revising the jurisdiction of justices' courts; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 31.260 is hereby amended to read as follows:
2 31.260 1. The writ of garnishment must:
3 (a) Be issued by the sheriff.
4 (b) Contain the name of the court and the names of the parties.
5 (c) Be directed to the garnishee defendant.
6 (d) State the name and address of the plaintiff's attorney, if any,
7 otherwise the plaintiff's address.
8 (e) Require each person the court directs, as garnishees, to
9 submit to the sheriff an answer to the interrogatories within 20 days
10 after service of the writ upon the person ***unless the time***



limitation is tolled because the plaintiff and defendant have entered into negotiations for settlement.

2. The writ of garnishment must also notify the garnishee defendant that, if he fails to answer the interrogatories ~~to~~ *or appear before a court that orders him to appear and answer the interrogatories*, a judgment by default will be rendered against him for:

(a) The amount demanded in the writ of garnishment or the value of the property described in the writ, as the case may be; or

(b) If the garnishment is pursuant to NRS 31.291, the amount of the lien created pursuant to that section,

➤ which amount or property must be clearly set forth in the writ of garnishment.

3. Execution on the writ of garnishment may occur only if the sheriff ~~mails~~ :

(a) Mails a copy of the writ with a copy of the notice of execution to the defendant in the manner and within the time prescribed in NRS 21.076. In the case of a writ of garnishment that continues for 120 days or until the amount demanded in the writ is satisfied, a copy of the writ and the notice of execution need only be mailed once to the defendant.

(b) Except as otherwise provided in subsection 4, delivers by personal service to the garnishee defendant or an employee or agent of the garnishee defendant, a copy of the writ and interrogatories with a copy of the notice of execution on the writ.

4. The sheriff may not deliver by personal service the copy of the writ and interrogatories with a copy of the notice of execution to the defendant.

Sec. 2. NRS 31.290 is hereby amended to read as follows:

31.290 1. The interrogatories to the garnishee may be in substance as follows:

INTERROGATORIES

Are you in any manner indebted to the defendants.....

.....
.....,
or either of them, either in property or money, and is the debt now due? If not due, when is the debt to become due? State fully all particulars.

Answer:

.....
Are you an employer of one or all of the defendants? If so, state the length of your pay period and the amount each defendant presently earns during a pay period.



1 Answer:
2

3 Did you have in your possession, in your charge or under
4 your control, on the date the writ of garnishment was served upon
5 you, any money, property, effects, goods, chattels, rights, credits or
6 choses in action of the defendants, or either of them, or in which
7is interested? If so, state its value, and state fully
8 all particulars.

9 Answer:
10

11 Do you know of any debts owing to the defendants, whether
12 due or not due, or any money, property, effects, goods, chattels,
13 rights, credits or choses in action, belonging to or in which
14is interested, and now in the possession or under
15 the control of others? If so, state particulars.

16 Answer:
17

18 State your correct name and address, or the name and address
19 of your attorney upon whom written notice of further proceedings in
20 this action may be served.

21 Answer:
22

23
24 Garnishee

25 I (insert the name of the garnishee), do solemnly swear (or
26 affirm) that the answers to the foregoing interrogatories by me
27 subscribed are true.

28
29 (Signature of garnishee)

30 SUBSCRIBED and SWORN to before me this day of
31 the month of of the year

32
33 2. ~~The~~ *Except as otherwise provided in subsection 3, the*
34 garnishee shall answer the interrogatories in writing upon oath or
35 affirmation and submit his answers to the sheriff within the time
36 required by the writ. If the garnishee fails to do so, he shall be
37 deemed in default.

38 3. *The time limitation for the garnishee to answer the*
39 *interrogatories is tolled for any period during which the plaintiff*
40 *and defendant have entered into negotiations for settlement. The*
41 *plaintiff must notify the garnishee if the negotiations for*
42 *settlement are not successful, in which case the garnishee must*
43 *answer within 20 days after service of the notice.*



Sec. 3. NRS 31.320 is hereby amended to read as follows:

31.320 1. If the garnishee has been duly served with the writ of garnishment and interrogatories, and been paid or tendered the fee of \$5, and the fact of the payment or tender is duly certified by the officer who served the writ over his official signature, or that fact is made to appear by the person serving the writ under oath, but the garnishee fails, neglects or refuses to answer the interrogatories within the time required, the court shall, upon application therefor by the plaintiff with at least 5 days' notice of the hearing upon the application given to each defendant who has appeared in the action, *order the garnishee to appear at the time and place fixed by the court and to answer the interrogatories.*

2. *If the garnishee:*

(a) *Fails to comply with the order of the court to appear before the court and answer the interrogatories, the court shall* enter judgment in favor of the defendant for the use of the plaintiff against the garnishee for ~~the~~:

~~—(a)—~~ *any costs incurred by the plaintiff in obtaining a judgment against the garnishee, including attorney's fees, and:*

(1) *The value of the property or amount of money specified in the writ of garnishment; or*

~~[(b)]~~ (2) *If the garnishment is pursuant to NRS 31.291, the amount of the lien created pursuant to that section.*

~~[(2)]~~ (b) *Complies with the order of the court to appear before the court and answer the interrogatories, the court shall enter judgment in favor of the defendant for the use of the plaintiff against the garnishee for any costs incurred by the plaintiff in obtaining a judgment against the garnishee, including attorney's fees, and:*

(1) *The value of the property or amount of money specified in the writ of garnishment to the extent of the garnishee's current indebtedness to the defendant; or*

(2) *If the garnishment is pursuant to NRS 31.291, the amount of the lien created pursuant to that section.*

3. On motion and upon such terms as are just, the court may relieve a garnishee defendant or his legal representative from any final judgment against the garnishee defendant ~~for the same reasons and upon the same terms and conditions as~~ :

(a) *As provided for by rule of court for relief from a judgment or order in civil cases* ~~[(1)]~~ ; or

(b) *If the court determines that the garnishee defendant failed to answer the interrogatories due to mistake, neglect or fraud.*

Sec. 4. NRS 4.370 is hereby amended to read as follows:

4.370 1. Except as otherwise provided in subsection 2, justices' courts have jurisdiction of the following civil actions and



1 proceedings and no others except as otherwise provided by specific
2 statute:

3 (a) In actions arising on contract for the recovery of money only,
4 if the sum claimed, exclusive of interest, does not exceed \$10,000.

5 (b) In actions for damages for injury to the person, or for taking,
6 detaining or injuring personal property, or for injury to real property
7 where no issue is raised by the verified answer of the defendant
8 involving the title to or boundaries of the real property, if the
9 damage claimed does not exceed \$10,000.

10 (c) Except as otherwise provided in paragraph (l) in actions for a
11 fine, penalty or forfeiture not exceeding \$10,000, given by statute or
12 the ordinance of a county, city or town, where no issue is raised by
13 the answer involving the legality of any tax, impost, assessment, toll
14 or municipal fine.

15 (d) In actions upon bonds or undertakings conditioned for the
16 payment of money, if the sum claimed does not exceed \$10,000,
17 though the penalty may exceed that sum. Bail bonds and other
18 undertakings posted in criminal matters may be forfeited regardless
19 of amount.

20 (e) In actions to recover the possession of personal property, if
21 the value of the property does not exceed \$10,000.

22 (f) To take and enter judgment on the confession of a defendant,
23 when the amount confessed, exclusive of interest, does not exceed
24 \$10,000.

25 (g) Of actions for the possession of lands and tenements where
26 the relation of landlord and tenant exists, when damages claimed do
27 not exceed \$10,000 or when no damages are claimed.

28 (h) Of actions when the possession of lands and tenements has
29 been unlawfully or fraudulently obtained or withheld, when
30 damages claimed do not exceed \$10,000 or when no damages are
31 claimed.

32 (i) Of suits for the collection of taxes, where the amount of the
33 tax sued for does not exceed \$10,000.

34 (j) Of actions for the enforcement of mechanics' liens, where the
35 amount of the lien sought to be enforced, exclusive of interest, does
36 not exceed \$10,000.

37 (k) Of actions for the enforcement of liens of owners of facilities
38 for storage, where the amount of the lien sought to be enforced,
39 exclusive of interest, does not exceed \$10,000.

40 (l) In actions for a fine imposed for a violation of NRS 484.757.

41 (m) Except in a judicial district that includes a county whose
42 population is 100,000 or more, in any action for the issuance of a
43 temporary or extended order for protection against domestic
44 violence.



(n) In an action for the issuance of a temporary or extended order for protection against harassment in the workplace pursuant to NRS 33.200 to 33.360, inclusive.

(o) In small claims actions under the provisions of chapter 73 of NRS.

(p) In actions to contest the validity of liens on mobile homes or manufactured homes.

(q) In any action pursuant to NRS 200.591 for the issuance of a protective order against a person alleged to be committing the crime of stalking, aggravated stalking or harassment.

(r) In actions transferred from the district court pursuant to NRS 3.221.

(s) In any action for the issuance of a temporary or extended order pursuant to NRS 33.400.

2. The jurisdiction conferred by this section does not extend to civil actions, other than for forcible entry or detainer, in which the title of real property or mining claims or questions affecting the boundaries of land are involved.

3. Justices' courts have jurisdiction of all misdemeanors and no other criminal offenses except as otherwise provided by specific statute. Upon approval of the district court, a justice's court may transfer original jurisdiction of a misdemeanor to the district court for the purpose of assigning an offender to a program established pursuant to NRS 176A.250.

4. Except as otherwise provided in subsections 5 and 6, in criminal cases the jurisdiction of justices of the peace extends to the limits of their respective counties.

5. In the case of any arrest made by a member of the Nevada Highway Patrol, the jurisdiction of the justices of the peace extends to the limits of their respective counties and to the limits of all counties which have common boundaries with their respective counties.

6. Each justice's court has jurisdiction of any violation of a regulation governing vehicular traffic on an airport within the township in which the court is established.

7. For the purposes of this section, the amount in controversy in any complaint, application, motion or petition against a third party who is not the subject of an action originating in a justice's court, including, but not limited to, a garnishee, guarantor, surety, insurer or third-party tortfeasor, is the maximum amount for which the third party may be held responsible.



