

ENROLLED HOUSE
BILL NO. 2118

BY: KINNAMON of the HOUSE

and

FISHER of the SENATE

AN ACT RELATING TO GARNISHMENTS; AMENDING 12 O.S. 1991, SECTION 1179, WHICH RELATES TO THE FAILURE OF A GARNISHEE TO ANSWER; REQUIRING CERTAIN ACTION OF THE COURT; REQUIRING CERTAIN NOTICE BE GIVEN TO GARNISHEE; AUTHORIZING ASSESSMENT OF ATTORNEY FEES AGAINST GARNISHEE; AUTHORIZING VACATION OR MODIFICATION OF CERTAIN ORDERS BY THE COURT; AMENDING 12 O.S. 1991, SECTION 1190, WHICH RELATES TO COSTS INCURRED BY GARNISHEE; MODIFYING AMOUNT OF CERTAIN COSTS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 1991, Section 1179, is amended to read as follows:

Section 1179. If any garnishee, having been duly summoned, shall fail to file and deliver or mail his answer affidavit as required in the preceding sections Sections 1172.2, 1176, 1178, 1178.1 and 1178.2 of this title, or to answer interrogatories as hereinafter provided in Section 1183 of this title, the court shall enter an order to said garnishee to file and deliver or mail his answer or to answer said interrogatories within a time prescribed by the court, not to be less than seven (7) days, in said order and also to deliver within the same period of time to the court or the garnishor any money or property of defendant that garnishee is required to pay or deliver under this title. The court shall also in the order direct the manner in which notice of said order shall be given to the garnishee and shall order that notice be given in such manner. The order for giving notice shall specify a manner of giving notice which is calculated to be most likely to give actual notice to the garnishee or its managing officers, directors or agents of said order. Said order shall specifically point out to the garnishee that the garnishee has failed to respond to the summons and shall specifically advise the garnishee that judgment will be rendered against it in the principal amount of the judgment against the defendant plus costs, which amounts will be specified, upon failure to conform with the requirements of the order. If said garnishee shall fail to file and deliver or mail his answer affidavit as required in said order or to answer interrogatories as provided in said order, then the court shall render judgment against him said garnishee as by default for the amount of the judgment and costs which the plaintiff shall recover against due the plaintiff from the defendant in the principal action together with the costs of such garnishment, including a reasonable attorney's fee to the plaintiff for prosecuting the garnishment. Such garnishee may also be proceeded against as for contempt. Provided, however, the court shall have power to vacate or modify any order issued pursuant to

this section in the manner provided in Sections 1031 or 1031.1 of this title.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 1190, is amended to read as follows:

Section 1190. A. A garnishee may deduct ~~Three Dollars (\$3.00)~~ Ten Dollars (\$10.00) from the funds of the defendant in his possession as reimbursement for costs incurred in answering. If no funds are available and the garnishee's answer evidencing that is filed and mailed or delivered to the plaintiff or to the plaintiff's attorney of record, the plaintiff shall pay the garnishee ~~Three Dollars (\$3.00)~~ Ten Dollars (\$10.00) as reimbursement for such costs.

B. 1. In case of the trial of any issue between the plaintiff and any garnishee, costs shall be awarded to the plaintiff and against the garnishee, in addition to his liability, if the plaintiff recovered more than the garnishee admitted by his answer; and if he does not, the garnishee shall recover costs of the plaintiff. The costs shall include a reasonable attorney's fee to be taxed in favor of the prevailing party.

2. In the case of the trial to determine the amount to be recovered for due and owing child support, where any liability on the part of the garnishee is disclosed, costs shall be awarded to the plaintiff and against the defendant, including a reasonable attorney's fee.

C. In all other cases under this article, not expressly provided for, the court may award costs in favor of or against any party, in its discretion. When there is no issue for trial, and any liability on the part of the garnishee is disclosed, the costs of the garnishment proceedings shall be taxed for the plaintiff, if he recovers as disbursements in the principal action.

SECTION 3. This act shall become effective September 1, 1992.

Passed the House of Representatives the 28th day of April, 1992.

Speaker of the House of
Representatives

Passed the Senate the 8th day of April, 1992.

President of the Senate