

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 1175

By: Cain of the Senate

and

Blackburn of the House

(child support - 12 O.S. 1991 - civil actions - 43 O.S.
1991 - liens and dormancy - effective date)

AUTHORS: Add the following House Coauthors: Roach, Tyler and
Roberts

AMENDMENT NO. 1. Strike the stricken title, enacting clause and
entire bill and insert

"(child support - amending 12 O.S., Section 95 -
statutes of limitation - amending 43 O.S., Sections 135
and 137 - enforcement of child support obligations -
effective date)

SECTION 1. AMENDATORY 12 O.S. 1991, Section 95, as last
amended by Section 11, Chapter 356, O.S.L. 1994 (12 O.S. Supp. 1995,
Section 95), is amended to read as follows:

Section 95. Civil actions other than for the recovery of real
property can only be brought within the following periods, after the
cause of action shall have accrued, and not afterwards:

1. Within five (5) years: An action upon any
contract, agreement, or promise in writing ~~;~~
2. Within three (3) years: An action upon a
contract express or implied not in writing; an
action upon a liability created by statute other

than a forfeiture or penalty; and an action on a foreign judgment-;

3. Within two (2) years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract, and not hereinafter enumerated; an action for relief on the ground of fraud - the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud-;

4. Within one (1) year: An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment; an action upon a statute for penalty or forfeiture, except where the statute imposing it prescribes a different limitation-;

5. An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff, or any other officer, or upon the bond or undertaking given in attachment, injunction, arrest, or in any case whatever required by the statute, can only be brought within five (5) years after the cause of action shall have accrued-;

6. An action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse incidents or exploitation as defined by Section 845 of Title 21 of the Oklahoma Statutes or incest can only be brought within the latter of the following periods:

- a. within two (2) years of the act alleged to have caused the injury or condition, or
- b. within two (2) years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by ~~said~~ the act or that the act caused the injury for which the claim is brought.

Provided, however, that the time limit for commencement of an action pursuant to this paragraph is tolled for a child until the child

reaches the age of eighteen (18) years. No action may be brought against the alleged perpetrator or the estate of the alleged perpetrator after the death of such alleged perpetrator. An action pursuant to this paragraph must be based upon objective verifiable evidence in order for the victim to recover damages for injuries suffered by reason of such sexual abuse, exploitation, or incest. The evidence should include both proof that the victim had psychologically repressed the memory of the facts upon which the claim was predicated and that there was corroborating evidence that the sexual abuse, exploitation, or incest actually occurred. The victim need not establish which act in a series of continuing sexual abuse incidents, exploitation incidents, or incest caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse, exploitation, or incest. Provided further, any action based on intentional conduct specified in paragraph 6 of this section must be commenced within twenty (20) years of the victim reaching the age of eighteen (18) ~~;~~

7. An action to establish paternity and to enforce support obligations can be brought any time before the child reaches the age of eighteen (18) ~~;~~

8. An action to establish paternity can be brought by a child if commenced within one (1) year after the child reaches the age of eighteen (18) ~~;~~

9. Court-ordered child support is owed until it is paid in full and it is not subject to a statute of limitations; and

10. An action for relief, not hereinbefore provided for, can only be brought within five (5) years after the cause of action shall have accrued.

SECTION 2. AMENDATORY 43 O.S. 1991, Section 135, as amended by Section 16, Chapter 356, O.S.L. 1994 (43 O.S. Supp. 1995, Section 135), is amended to read as follows:

Section 135. A. An arrearage in payment of child support reduced to an order of the court or administrative order of the Department of Human Services or any past due payment or installment of child support that is a judgment by operation of law may be a lien against the real and personal property of the person ordered to make such support payments.

B. Past due amounts of child support shall not become a lien upon the real and personal property of the person ordered to make such payments until ~~said~~ the person has been given notice and opportunity for a court or administrative hearing to determine the amount that is past due, provided that if ~~said~~ the person has been given a hearing in some other proceeding to contest the amount past due, ~~he~~ the person shall not be entitled to another hearing to determine whether amounts are past due for the same time period.

C. A certified copy of the judgment or order providing for the payment of an arrearage of child support or, subject to the provisions of subsection B of this section, a certified copy of a judgment or order providing for payment of child support pursuant to which a past due amount has accrued may be filed with the county clerk of the county where real property owned by the person obligated to pay support is situated and shall, from the time it is filed of record, become a lien upon ~~such~~ the real property, or upon any real property which may be acquired by ~~such~~ the person prior to the release of the lien, for the amount of the arrearage. The judgment or order shall not become a lien for any sums prior to the date they severally become due and payable. A child support judgment shall become dormant as a lien upon real property five (5) years from the date the judgment is filed of record with the county clerk unless execution is issued and filed with the county clerk within five (5) years from the date the judgment is determined or last execution on the judgment is issued as required by law.

D. 1. Judgments or orders providing for the payment of an arrearage of child support or, subject to the provisions of subsection B of this section, a judgment or order providing for payment of child support pursuant to which a past due amount has accrued shall become a lien upon the personal property of the person ordered to pay ~~such~~ the support upon:

- a. the filing of an affidavit and a certified copy of the judgment or order in the office of the county clerk of the county in which the personal property is situated; and
- b. issuance of execution on ~~such~~ the judgment or order and levy of execution upon ~~such~~ the personal property; and
- c. the taking of physical possession thereof; or
- d. the filing of an affidavit and a certified copy of the judgment or order with the Administrator of the Workers' Compensation Court, if a proceeding for compensation under the Workers' Compensation Act, Section 1 et seq. of Title 85 of the Oklahoma Statutes has been initiated by or on behalf of the obligor.

2. The affidavit provided for in paragraph 1 of this subsection shall identify:

- a. the case;
- b. whether the judgment or order was rendered by the Department of Human Services or by the court, and if by the court, then the name of ~~such~~ the court;
- c. the name of the person against whom the judgment or order was rendered;
- d. the name of the person for whom the judgment or order was rendered;

- e. the principal sum of the judgment or order for arrearages or the amount that is past due pursuant to the judgment or order; and
- f. the date on which the judgment or order was rendered.

3. Upon the filing of an affidavit pursuant to subparagraph d of paragraph 1 of this subsection, a copy of the affidavit shall be mailed by certificate of mailing to the last-known address of the obligor and to all attorneys and insurance carriers of record.

E. The provisions of this section shall not authorize a sale of any property to enforce a lien which is otherwise exempted by state law.

F. A lien shall be released upon the full payment of the amount of the arrearage.

G. The person entitled to ~~such~~ support or the Department of Human Services on behalf of its clients and recipients is authorized to enforce the liens created pursuant to this section and to execute releases or partial releases of such liens.

SECTION 3. AMENDATORY 43 O.S. 1991, Section 137, as last amended by Section 1, Chapter 366, O.S.L. 1994 (43 O.S. Supp. 1995, Section 137), is amended to read as follows:

Section 137. A. Any payment or installment of child support ordered pursuant to any order, judgment, or decree of the district court or administrative order of the Department of Human Services is, on and after the date it becomes past due, a judgment by operation of law. Such judgments for past due support shall:

- 1. Have the full force and effect of any other judgment of this state, including the ability to be enforced by any method available under the laws of this state to enforce and collect money judgments; and
- 2. Be entitled to full faith and credit as a judgment in this state and any other state.

B. Such judgments shall be subject to an action for collection ~~action~~ only after the child support obligor has been given notice and opportunity for a court or administrative hearing to determine the amount that is past due, ~~r;~~ provided, that if the obligor has been given a hearing in some other proceeding to contest the amount past due, ~~he~~ the obligor shall not be entitled to another hearing to determine whether amounts are past due for the same time period.

C. ~~Unless~~ A child support judgment shall not become dormant for any purpose, except that it shall cease to be a lien upon real property five (5) years from the date it is filed of record with the county clerk in the county where the property is located, unless execution is issued and filed within five (5) years from the date of the judgment is determined or last execution on said the judgment is issued as required by law, ~~a judgment for past due child support shall become dormant for all purposes except for enforcement of the judgment by:~~

~~1. An income or wage assignment initiated pursuant to the laws of this state or any other state;~~

~~2. Periodic payments from the judgment debtor by order of the district court or of the Department of Human Services; or~~

~~3. Referral of the past due amount to the Internal Revenue Service and, if appropriate, to the Oklahoma Tax Commission or another state's taxation agency for interception of the judgment debtor's annual state and federal tax refund in cases being enforced by the Department of Human Services.~~

1. Except as otherwise provided by court order, a judgment for past due child support shall be enforceable until paid in full.

2. An order that provides for payment of child support, if willfully disobeyed, may be enforced by indirect civil contempt proceedings, notwithstanding that the support payment is a judgment on and after the date it becomes past due. Amounts determined to be past due in an administrative proceeding by the Department of Human

Services may subsequently be enforced by indirect civil contempt proceedings.

D. An arrearage payment schedule set by a court or administrative order shall not exceed three (3) years, unless imposition of such a payment schedule would be unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of the child or children involved. When making ~~such~~ this determination, reasonable support obligations of either parent ~~as to~~ for other children in the custody of ~~said~~ the parent may be considered. If an arrearage payment schedule that exceeds three (3) years is set, specific findings of fact supporting ~~such~~ the action shall be made.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5.1 of Title 31, unless there is created a duplication in numbering, reads as follows:

The exemption of homestead as provided in Title 31 of the Oklahoma Statutes shall not apply where the debt is due for court- or administrative-ordered child support payments of the debtor or obligor owed to the person or entity entitled to such support.

SECTION 5. This act shall become effective November 1, 1996."

Passed the House of Representatives the 11th day of April, 1996.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1996.

President of the Senate