

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2555

By: Vaughn

AS INTRODUCED

An Act relating to poor persons; amending Section 10, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1995, Section 240.14), which relates to child support obligations; providing that an unpaid child support obligation is a lien as of date on which it was due; providing for filing; making certain orders upon filing a lien; providing for encumbrances of certain property; providing for contents; providing for perfection of certain liens; providing for notice of certain persons, agencies and locations of certain liens; prohibiting charging of certain fees; providing for transmittal and receipt of certain information; providing for priority of certain liens; authorizing certain disclosures; requiring notice to obligor; requiring contents and certain dates; providing for administrative reviews; providing for enforcement; providing for collection; providing for expiration of liens; providing for continuation of underlying order or judgment of child support; authorizing waivers; authorizing certain liens and seizures for unpaid child support; requiring certain surrender of property; requiring certain organizations holding

life insurance contracts to make certain advancements; requiring payments; prohibiting exceeding certain limitations; providing for superior perfected liens; providing for liability of certain persons refusing to surrender certain property; providing for certain discharges; providing for additional forms of relief; requiring certain notices; specifying contents; providing for appeals; prohibiting certain stays; limiting review; defining term; and providing an effective date.

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

SECTION 1. AMENDATORY Section 10, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1995, Section 240.14), is amended to read as follows:

Section 240.14 A. A child support obligation which is unpaid in whole or in part shall, as of the date on which it was due, be a lien in favor of the obligee in an amount sufficient to satisfy unpaid child support, whether the amount due is a fixed sum or is accruing periodically.

B. Whenever the administrative court pursuant to Section 238.3a, 238.4 or 240.2 of this title finds that an obligor is liable for a specified amount, as of that date, the administrative court shall enter ~~such~~ the amount as a judgment against the obligor in an administrative order.

~~After the order has been~~ C. A true copy of the administrative order, certified by the court clerk, may be filed in the office of

the court clerk in the county in which a prior order of support is filed, or in the county of residence of the custodian of the child or if the custodian resides out of state, in the county of residence of the obligor, ~~a true copy of that order, certified by the court clerk.~~ In addition, the order may be filed in the office of the county clerk of any county in which the obligor owns real property and, ~~upon~~ in any other office of the county clerk in the state.

D. 1. a. Upon filing, the order shall become a lien ~~upon~~ the real property of the obligor, that shall encumber all tangible and intangible property, whether real or personal, and any interest in property, whether legal or equitable, belonging to the obligor on the date of filing.

b. An interest in property acquired by obligor after the child support lien is filed shall also be subject to the lien and to the limitations provided in this paragraph and to subsection H of this section.

2. The lien shall have the same force and effect and be subject to the same requirements and limitations as a judgment of the district court against the obligor for that amount, ~~but not for future child support until reduced to judgment.~~

E. 1. The filing shall operate to perfect a lien when duly recorded and indexed in the grantor index or when registered, as the case may be, as to any interest in real property maintained in each office of the county clerk. If the obligor subsequently acquires any interest in real property within six (6) years of the filing of the lien specified by this section in any such county clerk's office, or as otherwise provided in subsection J of this section, the lien shall be perfected upon the recording or registering of the instrument by which such interest is obtained in the office of the county clerk.

2. A child support lien shall be perfected as to real property when both the notice of the lien and a deed or other instrument in the name of the obligor are on file in the office of the county clerk in the district where the obligor owns property without respect to whether the lien or the deed or other instrument was recorded or registered first.

F. 1. The Child Support Enforcement Division of the Department of Human Services shall also file notice of the child support lien, with respect to personal property, with the Secretary of State, the Department of Public Safety, a municipality, or other office or agency responsible for the filing or recording of liens. The social security number of the obligor shall be noted on the notice of such child support lien.

2. The Child Support Enforcement Division of the Department of Human Services may file a notice of a lien or waiver or release of a lien or may transmit information to or receive information from any county clerk's office or other office or agency responsible for the filing or recording of liens by any means, including but not limited to electronic means.

3. The filing of notice of a lien or a waiver or release of a lien shall be received and registered or recorded without payment of a fee.

4. The perfected lien shall not be subordinate to any recorded lien except a lien that has been perfected before the date on which the child support lien was perfected; provided, however, that the Child Support Enforcement Division of the Department of Human Services may, upon request of the obligor, subordinate the child support lien to a subsequently perfected mortgage.

G. To assist in the collection of a debt by the Child Support Enforcement Division of the Department of Human Services, the Child Support Enforcement Division of the Department of Human Services may disclose the name of an obligor against whom a lien has arisen and

other identifying information including the existence of the lien and the amount of the outstanding obligation.

H. 1. The lien effectuated pursuant to this section shall expire:

a. upon either termination of a current child support obligation and payment in full of unpaid child support, or upon release of the lien by the Child Support Enforcement Division of the Department of Human Services, or

b. six (6) years from the date on which the lien was first perfected; provided, however, that the lien may be extended for additional periods of six (6) years by recording or registering, within one (1) year before the expiration of the lien, a further notice of the lien, as provided in subsection A of this section, without affecting the priority of the lien.

2. The Child Support Enforcement Division of the Department of Human Services may issue a full or partial waiver of any lien imposed under this section. The waiver or release shall be conclusive evidence that the lien upon the property covered by the waiver or release is extinguished.

3. Expiration of the lien shall not terminate the underlying order or judgment of child support.

I. 1. When the Child Support Enforcement Division of the Department of Human Services determines that child support is unpaid, it shall send written notice to the obligor by first-class mail, if the address of the obligor is known to the Child Support Enforcement Division of the Department of Human Services no less frequently than once a year, subject to the provisions of subsection H of this section. The notice shall specify the amount unpaid as of the date of the notice or other date certain and the right of the obligor to request an administrative review by filing a written

request with the Child Support Enforcement Division of the Department of Human Services within thirty (30) days of the date of the notice.

2. If the obligor files a timely written request for an administrative review, the Child Support Enforcement Division of the Department of Human Services shall conduct the review within twenty-one (21) days of said request and shall not conduct further administrative enforcement actions under this section until the review is completed.

3. If the obligor has failed to keep the Child Support Enforcement Division of the Department of Human Services informed of his address as required by paragraph 4 of subsection C of Section 237 of this title and the Division cannot otherwise determine the current address of the obligor from other information available to the Division, the Child Support Enforcement Division of the Department of Human Services may proceed under the provisions of subsection J of this section.

4. The Child Support Enforcement Division of the Department of Human Services may proceed to collect the unpaid child support by perfecting a lien pursuant to this section or by executing a levy or seizure of property pursuant to subsection J of this section or by any other available remedy without respect to the thirty-day notice period provided in subsection I of this section.

J. 1. If any obligor against whom a lien has been filed and perfected pursuant to this section neglects or refuses to pay the sum due after the expiration of the thirty-day notice period specified in subsection I of this section, the Child Support Enforcement Division of the Department of Human Services may collect the unpaid child support and levy upon all property as provided in this section. A person in possession of property upon which a lien having priority under subsection F of this section has been perfected shall, upon demand, surrender the property to the Child

Support Enforcement Division of the Department of Human Services as provided in this section.

2. A levy on property held by an organization with respect to a life insurance contract shall constitute, without necessity for the surrender of the contract document, a demand by the Child Support Enforcement Division of the Department of Human Services for payment of the amount of the lien and the exercise of the right of the obligor to the advance of the amount. The organization shall pay the amount ninety (90) days after service of notice of levy. The levy shall be deemed to be satisfied if the organization pays over to the Child Support Enforcement Division of the Department of Human Services the full amount which the obligor could have had advanced. The amount of the advance shall not exceed the amount of the lien.

3. Whenever any property upon which levy has been made is not sufficient to satisfy the claim of the state for which levy is made, the Child Support Enforcement Division of the Department of Human Services may, as often as may be necessary, proceed to levy, without further notice to the obligor, upon any other property of the obligor liable to levy upon first perfecting its lien as provided by subsection D of this section, until the amount due from the obligor together with expenses is fully paid.

4. The Child Support Enforcement Division of the Department of Human Services shall have any rights to any property remaining after satisfying any superior perfected liens, as provided in subsection F of this section.

K. Upon demand by the Child Support Enforcement Division of the Department of Human Services, any person who fails or refuses to surrender property subject to levy pursuant to this section shall be personally liable to the state in a sum equal to the value of the property not so surrendered but not exceeding the amount of the lien, together with costs from the date of the levy. In addition, any person required to surrender property who fails or refuses to

surrender the property without reasonable cause shall be liable for an administrative penalty equal to twenty-five percent (25%) of the amount recoverable. The interest or penalty incurred pursuant to this subsection shall be paid to the Department of Human Services for deposit in the Child Support Revenue Enhancement Fund and not credited against the child support liability.

L. 1. Any person in possession of, or obligated with respect to, property who, upon demand by the Child Support Enforcement Division of the Department of Human Services, surrenders the property or discharges the obligation to the Child Support Enforcement Division of the Department of Human Services, or who pays a liability pursuant to this section, shall be discharged from any obligation or liability to the obligor arising from the surrender or payment.

2. In the case of a levy on an organization with respect to life insurance contract which is satisfied pursuant to this section, the organization shall be discharged from any obligation or liability to any beneficiary arising from the surrender or payment.

M. In any case where there has been a refusal or neglect to pay child support or to discharge any liability, whether or not a levy has been made, the Child Support Enforcement Division of the Department of Human Services, in addition to other forms of relief, may file a civil action in the district court which originally entered the order for child support to enforce the lien pursuant to this section. The filing of the civil action shall not preclude the Child Support Enforcement Division of the Department of Human Services from enforcing the child support order through use of any administrative means authorized by federal or state law.

N. The Child Support Enforcement Division of the Department of Human Services shall send timely written notice to the obligor by first-class mail of any action taken to perfect a lien, execute a levy or seize any property. The notice shall specify the:

1. Amount due;

2. Steps to be followed in order to have the property placed under lien, levied or seized;

3. Time period within which to respond to the notice; and

4. Name of the court, district or administrative, which entered the child support order.

O. Any person aggrieved by a determination of the Child Support Enforcement Division of the Department of Human Services pursuant to this section may, upon exhaustion of the procedures for administrative review provided, seek judicial review in the district court where the order or judgment was issued or registered.

Commencement of the review shall not stay enforcement for collection of child support pursuant to the provisions of this section. The district court may review the actions taken by the Child Support Enforcement Division of the Department of Human Services under the provisions of this section and may correct any mistakes of fact but, the district court shall not have the authority to reduce or retroactively modify the child support arrears.

P. For the purposes of this section, the term "levy" shall include the power of distraint and seizure by any lawful means.

SECTION 2. This act shall become effective November 1, 1996.

45-2-8790

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