

ENROLLED SENATE  
BILL NO. 441

By: Smith of the Senate

and

Steidley of the House

An Act relating to liens; amending 12 O.S. 1991, Sections 706, as amended by Section 13, Chapter 351, O.S.L. 1993, 727, 735 and 759 (12 O.S. Supp. 1996, Section 706), which relate to judgments and executions; clarifying that judgment lien attaches to homestead; prescribing method for computation of postjudgment interest; providing for maximum amount of postjudgment interest for which governmental entities liable; prescribing method for computation of interest using annually determined interest rate; prescribing method for computation of prejudgment interest; providing for maximum amount of prejudgment interest for which governmental entities liable; modifying references; providing for use of interest rate computations on certain judgments; providing for filing of certain notice to extend judgment lien; amending 28 O.S. 1991, Section 152, as amended by Section 9, Chapter 286, O.S.L. 1995 (28 O.S. Supp. 1996, Section 152), which relates to court costs and filing fees; specifying fee for filing certain notice; and providing effective dates.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 706, as amended by Section 13, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1996, Section 706), is amended to read as follows:

Section 706. A. Scope. This section applies to all judgments of courts of record of this state, and judgments of courts of record of the United States not subject to the registration procedures of the Uniform Federal Lien Registration Act, Section 3401 et seq. of Title 68 of the Oklahoma Statutes, which award the payment of money, regardless of whether such judgments also include other orders or relief.

B. Creation of Lien. A judgment to which this section applies shall be a lien on the real estate of the judgment debtor within a county only from and after a Statement of Judgment made by the judgment creditor or the judgment creditor's attorney, substantially in the form prescribed by the Administrative Director of the Courts, has been filed in the office of the county clerk in that county.

1. Presentation of a Statement of Judgment and tender of the filing fee, shall, upon acceptance by the county clerk, constitute filing under this section.

2. A lien created pursuant to this section shall affect and attach to all real property, including the homestead, of judgment debtors whose names appear in the Statement of Judgment; however, judgment liens on a homestead are exempt from forced sale pursuant to Section 1 of Title 31 of the Oklahoma Statutes and Section 2 of Article XII of the Oklahoma Constitution.

C. Judgment Index. A judgment index shall be kept by each county clerk in which the name of each person named as a judgment debtor in a Statement of Judgment filed with the county clerk shall appear in alphabetical order.

1. It shall be the duty of the county clerk, immediately after the filing of the Statement of Judgment, to make in the judgment index a separate entry in alphabetical order of the name of each judgment debtor named therein, which entry shall also contain the name(s) of the judgment creditor(s), the name of the court which granted the judgment, the number and style of the case in which the judgment was filed, the amount of the judgment, including interest, costs and attorney's fees if shown on the Statement of Judgment, the date of the filing of the judgment with the court clerk of the court which granted it, and the date of filing of the Statement of Judgment with the county clerk.

2. It shall also be the duty of the county clerk, immediately after the filing of a Release of Judgment Lien, to make a notation in each entry in the judgment index made when any Statement of Judgment was filed with respect to the judgment being released, of the date of filing of the Release with the county clerk, the name of the judgment creditor on whose behalf the Release is filed, and whether the Release states that it is only a partial Release.

D. Execution of Judgment. Execution shall be issued only from the court which granted the judgment being enforced.

E. Release of Lien of Judgment. The lien of a judgment upon the real estate of judgment debtor in any county, which has not become unenforceable by operation of law, is released only upon the filing in the office of the county clerk in that county of a Release of Judgment Lien, or a copy thereof certified by the court clerk of the court which granted the judgment.

1. A judgment lien may be released, in whole or in part, by filing a Release of Judgment Lien with the county clerk by the judgment creditor or his or her attorney.

a. A Release of Judgment Lien shall either recite the name of the court which granted the judgment, the number and style of the case, the name of each judgment debtor with respect to whom the lien is being released, the name of each judgment creditor in favor

of whom the lien was created, or otherwise adequately identify the judgment lien being released and the judgment debtor against whom the lien is indexed. The Administrative Director of the Courts shall prescribe a form of Release of Judgment which may be used at the option of the judgment creditor.

- b. If the release is only partial, it shall also contain a description of the lands then being released from the judgment lien or identify the particular judgment debtors, if less than all, with respect to whom the lien is then being released, or both, as the case may be.
- c. A Release of Judgment Lien may also be filed with the court clerk of the court which granted the judgment but filing with the court clerk does not release any judgment lien created pursuant to this section.

2. The lien of any judgment which has been satisfied by payment or otherwise discharged and which has not been released by the judgment creditor shall be released by the court upon written motion.

- a. The motion shall be accompanied by an affidavit stating the grounds for the motion, and shall contain or be accompanied by a notice to the judgment creditor that, if the judgment creditor does not file with the court a response or objection to the motion within fifteen (15) days after the mailing of a copy of the motion to the judgment creditor, the court will order the judgment lien released.
- b. A copy of the motion shall be mailed by certified mail by the party seeking release of the lien to the judgment creditor at the last-known address of the judgment creditor, and to the attorney of record of the judgment creditor, if any. There shall be attached to the filed motion, and to each copy of the motion to be mailed, a Certificate of Mailing showing to whom copies of the motion were mailed, the addresses to which they were mailed, and the date of mailing.
- c. If the judgment creditor does not file a response or objection to the motion within fifteen (15) days after the mailing of a copy of the motion, the court shall order the judgment lien released.
- d. When a judgment lien is ordered released by the court, the court shall cause a Release of Judgment Lien, in the form provided by the Administrative Director of the Courts, to be prepared. Instructions shall be printed on such form advising the judgment debtor to file the Release in the office of the county clerk of the county in which the real estate is situated in order to obtain the release of the lien of the judgment upon the real estate of the judgment debtor in such county.
- e. The party filing the motion for release shall pay all costs of the proceeding and any recording fees.

F. Effect of Filing or Recording a Judgment. The filing or recording of a judgment itself in the office of a county clerk on or after October 1, 1993, shall not be effective to create a general money judgment lien upon real estate, but a certified copy of a judgment may be recorded in such office for the purpose of giving notice of its contents whether or not recording is required by law.

G. Acceptance by County Clerk. The county clerk shall accept for filing and file any Statement of Judgment or Release of Judgment

Lien without requiring any formalities of execution other than those provided in this section.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 727, is amended to read as follows:

Section 727.

#### POSTJUDGMENT INTEREST

A. Except as otherwise provided by this section, all judgments of courts of record shall bear interest at a rate prescribed pursuant to subsection I of this section.

B. Judgments against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, shall bear interest during the term of judgment at a rate prescribed pursuant to subsection I of this section, but not to exceed ten percent (10%), from the date of rendition. No judgment against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, inclusive of postjudgment interest, shall exceed the total amount of liability of the governmental entity pursuant to the Governmental Tort Claims Act.

C. The postjudgment interest authorized by subsection A or subsection B of this section shall accrue from the date as of which the judgment is rendered, irrespective of the date as of which the judgment is filed with a court clerk or with a county clerk, and shall initially accrue at the rate in effect for the calendar year during which the judgment is rendered until the end of the calendar year in which the judgment was rendered, or until the judgment is paid, whichever first occurs. Beginning on the first day of January of the next succeeding calendar year until the end of that calendar year, or until the judgment is paid, whichever first occurs, the judgment, together with postjudgment interest previously accrued, shall bear interest at the rate in effect for judgments rendered during such calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. For each succeeding calendar year, or part of a calendar year, during which a judgment remains unpaid, the judgment, together with postjudgment interest previously accrued, shall bear interest at the rate in effect for judgments rendered during such calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. A separate computation using the interest rate in effect for judgments as provided by subsection I of this section shall be made for each calendar year, or part of a calendar year, during which the judgment remains unpaid in order to determine the total amount of interest for which the judgment debtor is liable. The postjudgment interest rate for each calendar year, or part of a calendar year, a judgment remains unpaid shall be multiplied by the original amount of the judgment, including any prejudgment interest, together with postjudgment interest previously accrued. Interest shall accrue on a judgment in the manner prescribed by this subsection until the judgment is satisfied or released.

D. If a rate of interest is specified in a contract, the rate therein shall apply to the judgment debt and be specified in the journal entry of judgment. Said rate shall not exceed the lawful rate for such obligation.

#### PREJUDGMENT INTEREST

E. Except as provided by subsection F of this section, if a verdict for damages by reason of personal injuries or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another is accepted by the trial court, the court in rendering

judgment shall add interest on said verdict at a rate prescribed pursuant to subsection I of this section from the date the suit resulting in the judgment was commenced to the date of verdict. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar year in which the suit resulting in the judgment is commenced. This rate shall be in effect until the end of the calendar year in which the suit resulting in judgment was filed or until the date judgment is rendered, whichever first occurs. Beginning on the first day of January of the next succeeding calendar year until the end of that calendar year, or until the date judgment is rendered, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each such calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of all prejudgment interest has been completed, the total amount of prejudgment interest shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection A of this section.

F. If a verdict of the type described by subsection E of this section is rendered against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, the judgment shall bear interest at the rate prescribed pursuant to subsection I of this section, but not to exceed ten percent (10%) from the date the suit was commenced to the date of verdict. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar year in which the suit resulting in the judgment is commenced. This rate shall be in effect until the end of the calendar year in which the suit resulting in judgment was filed or until the date judgment is rendered, whichever first occurs. Beginning on the first day of January of the next succeeding calendar year until the end of that calendar year, or until the date judgment is rendered, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each such calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of prejudgment interest has been completed, the amount shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection B of this section. No award of prejudgment interest against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, including the amount of the judgment awarded pursuant to trial of the action, shall exceed the total amount of liability of the governmental entity pursuant to the Governmental Tort Claims Act.

G. If exemplary or punitive damages are awarded in an action for personal injury or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another, the interest on said award shall begin to accrue as of the date the judgment is rendered by the trial court.

H. If a judgment is rendered establishing the existence of a lien against property and no rate of interest exists, the court

shall allow prejudgment interest at a rate prescribed pursuant to subsection I of this section from the date the lien is filed to the date of verdict.

I. For purposes of computing either postjudgment interest or prejudgment interest as authorized by this section, interest shall be determined using a rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified to the Administrative Director of the Courts by the State Treasurer on the first regular business day in January of each year, plus four percentage points.

J. For purposes of computing postjudgment interest, the provisions of this section, including the amendments prescribed by this act, shall be applicable to all judgments of the district courts rendered on or after January 1, 1998. Effective January 1, 1998, the method for computing postjudgment interest prescribed by this section shall be applicable to all judgments remaining unpaid rendered prior to January 1, 1998.

K. For purposes of computing prejudgment interest, the provisions of this section, including the amendments prescribed by this act, shall be applicable to all actions which are filed in the district courts on or after January 1, 1998, for which an award of prejudgment interest is authorized by the provisions of this section.

SECTION 3. AMENDATORY 12 O.S. 1991, Section 735, is amended to read as follows:

Section 735. If execution is not issued by the court clerk and filed with the county clerk as provided in Section 759 of this title, or a notice of renewal of judgment substantially in the form prescribed by the Administrative Director of the Courts is not filed with the court clerk, or a garnishment summons is not issued by the court clerk within five (5) years after the date of any judgment that now is or may hereafter be rendered in any court of record in this state, or if more than five (5) years has passed from the date that the last execution on the judgment was filed with the county clerk, or the last notice of renewal of judgment was filed with the court clerk, or the date that the last garnishment summons was issued, the judgment shall become unenforceable and of no effect; provided, this section shall not apply to judgments against municipalities.

SECTION 4. AMENDATORY 12 O.S. 1991, Section 759, is amended to read as follows:

Section 759. A. When a general execution is issued and placed in the custody of a sheriff for levy, a certified copy of the execution shall be filed in the office of the county clerk of the county whose sheriff holds the execution and shall be indexed in the same manner as judgments.

B. If a general or special execution is levied upon lands and tenements, the sheriff shall endorse on the face of the writ the legal description and shall have three disinterested persons who have taken an oath to impartially appraise the property levied on, upon actual view; and the disinterested persons shall return to the officer their signed estimate of the real value of the property.

C. To extend a judgment lien beyond the initial or any subsequent statutory period, prior to the expiration of such period, one of the following shall be filed and indexed in the same manner as judgments in the office of the county clerk in the county in which the statement of judgment was filed and the lien thereof is sought to be retained:

1. A certified copy of a general execution upon the judgment;
2. A certified copy of a notice of renewal of judgment; or
3. A certified copy of a garnishment summons issued against the judgment debtor.

SECTION 5. AMENDATORY 28 O.S. 1991, Section 152, as amended by Section 9, Chapter 286, O.S.L. 1995 (28 O.S. Supp. 1996, Section 152), is amended to read as follows:

Section 152. A. In any civil case filed in a district court, the court clerk shall collect, at the time of filing, the following flat fees, none of which shall ever be refundable, and which shall be the only charge for court costs, except as is otherwise specifically provided for by law:

1. Actions for divorce, alimony without divorce, separate maintenance, custody or support \$72.00
2. Any ancillary proceeding to modify or vacate a divorce decree providing for custody or support \$30.00
3. Probate and guardianship ..... \$72.00
4. Annual guardianship report ..... \$20.00
5. Any proceeding for sale or lease of real or personal property or mineral interest in probate or guardianship \$30.00
6. Any proceeding to revoke the probate of a will \$30.00
7. Judicial determination of death ..... \$45.00
8. Adoption ..... \$72.00
9. Civil actions and condemnation ..... \$72.00
10. Garnishment ..... \$10.00
11. Continuing wage garnishment ..... \$50.00
12. Any other proceeding after judgment ..... \$20.00
13. All others, including but not limited to actions for forcible entry and detainer, judgments from all other courts, including the Workers' Compensation Court \$72.00
14. Notice of renewal of judgment ..... \$10.00

B. Of the amounts collected pursuant to subsection A of this section, the sum of Three Dollars (\$3.00) shall be deposited to the credit of the Law Library Fund pursuant to Section 1201 et seq. of Title 20 of the Oklahoma Statutes.

C. In any case in which a litigant claims to have a just cause of action and that, by reason of poverty, the litigant is unable to pay the fees and costs provided for in this section and is financially unable to employ counsel, upon the filing of an affidavit in forma pauperis executed before any officer authorized by law to administer oaths to that effect and upon satisfactory showing to the court that the litigant has no means and is, therefore, unable to pay the applicable fees and costs and to employ counsel, no fees or costs shall be required. The opposing party or parties may file with the court clerk of the court having jurisdiction of the cause an affidavit similarly executed contradicting the allegation of poverty. In all such cases, the court shall promptly set for hearing the determination of eligibility to litigate without payment of fees or costs. Until a final order is entered determining that the affiant is ineligible, the clerk shall permit the affiant to litigate without payment of fees or costs. Any litigant executing a false affidavit or counter affidavit pursuant to the provisions of this section shall be guilty of perjury.

SECTION 6. Sections 1, 3, 4 and 5 this act shall become effective November 1, 1997.

SECTION 7. Section 2 of this act shall become effective January 1, 1998.