

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1273

By: Ericson

AS INTRODUCED

An Act relating to garnishment; amending 12 O.S. 1991, Section 1170, as last amended by Section 1, Chapter 345, O.S.L. 2000 (12 O.S. Supp. 2000, Section 1170), which relates to definitions; modifying definitions; adding definition; amending 12 O.S. 1991, Section 1171, as amended by Section 2, Chapter 338, O.S.L. 1995 (12 O.S. Supp. 2000, Section 1171), which relates to classes of garnishment; expanding types of postjudgment garnishments; providing for income apportionment to recover restitution, fees, fines, assessments and costs ordered by the court; providing procedure for assessing and collection of income apportionment; amending 12 O.S. 1991, Sections 1173 and 1173.4, as last amended by Sections 14 and 15, Chapter 293, O.S.L. 1999 (12 O.S. Supp. 2000, Sections 1173 and 1173.4), which relate to noncontinuing and continuing earnings garnishments; modifying procedure for calculation of withholdings; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 1170, as last amended by Section 1, Chapter 345, O.S.L. 2000 (12 O.S. Supp. 2000, Section 1170), is amended to read as follows:

Section 1170. A. For the purposes of this subsection ~~and,~~ Sections 1171.2 through ~~1171.4~~ 1171.3 of this title, and Section 3 of this act:

1. "Arrearage" means the total amount of unpaid support obligations or the total amount of unpaid restitution, court fees, fines, court assessments, or court costs;

2. "Delinquency" means any payment under an order for support or any payment under an order issued pursuant to Section 3 of this act which becomes due and remains unpaid;

3. "Income" or "earnings" means any form of payment to an individual regardless of source including, but not limited to, wages, salary, commission, compensation as an independent contractor, workers' compensation, disability, annuity and retirement benefits, and any other payments made by any person, private entity, federal or state government, any unit of local government, school district, or any entity created by law;

4. "Disposable income" means income or earnings less any amounts required by law to be withheld, including, but not limited to, federal, state, and local taxes, Social Security, and public assistance payments;

5. "Obligor" means the person who is required to make payments under an order for support or an order issued pursuant to Section 3 of this act;

6. "Person entitled" or "obligee" means the person to whom a duty of support is owed as designated in the support order or as otherwise specified by the court or the person or agency to whom payments are due pursuant to Section 3 of this act;

7. "Payor" means any person or entity paying monies, income, or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person;

8. "Support order" means an order for the payment of child support issued by a district court or the Department of Human Services;

9. "Income assignment" is a provision of a support order which directs the obligor to assign a portion of the monies, income, or periodic earnings due and owing to the obligor to the person entitled to the support or to another person designated by the support order or assignment for payment of support or arrearages or both. The assignment shall be in an amount which is sufficient to meet the periodic support arrearages or other maintenance payments

or both imposed by the court order or administrative order. The income assignment shall be made a part of the support order;

10. "Child support" means and includes all payments or other obligations due and owing to the person entitled by the obligor pursuant to a child support order, including but not limited to medical insurance or health care premiums and other medical expenses, current child care obligations, child care arrearages and any fixed child care obligations and such other expenses and requirements as specified in Section 118 of Title 43 of the Oklahoma Statutes; ~~and~~

11. "Notice of income assignment" means the standardized form prescribed by the United States Secretary of Health and Human Services that is required to be used in all cases to notify a payor of an order to withhold for payment of child support and other maintenance payments; and

12. "Income apportionment" means a provision of an order issued pursuant to Section 3 of this act which directs the obligor to assign a portion of the monies, income, or periodic earnings due and owing to the obligor to the person or agency entitled to the payments. The apportionment shall be in an amount which is sufficient to meet the periodic arrearages or other payments imposed by the court.

B. For the purposes of prejudgment garnishments, "judgment creditor" includes prejudgment garnishors.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 1171, as amended by Section 2, Chapter 338, O.S.L. 1995 (12 O.S. Supp. 2000, Section 1171), is amended to read as follows:

Section 1171. A. Any creditor shall be entitled to proceed by garnishment in any court having jurisdiction against any person who shall be indebted to the creditor's debtor or has any property in his possession or under his control belonging to such creditor's

debtor, in the cases, upon the conditions, and in the manner described by law.

B. Subject to the limitations and exceptions otherwise provided by law, there shall be two classes of garnishments:

1. Prejudgment garnishments, which shall consist only of general garnishments pursuant to Section 1173.3 of this title; and

2. Postjudgment garnishments, which shall consist of the following types of garnishments:

- a. Income assignment for child support pursuant to the provisions of Section 1171.2 of this title~~;~~,
- b. Noncontinuing earnings garnishment pursuant to Section 1173 of this title~~;~~,
- c. Garnishment for collection of child support pursuant to Section 1173.2 of this title~~;~~,
- d. General garnishment pursuant to Section 1173.3 of this title~~;~~and,
- e. Continuing earnings garnishment pursuant to Section 1173.4 of this title~~,~~ and
- f. Income assignment for unpaid restitution, court fees, fines, court assessments, or court costs, pursuant to Section 3 of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1171.5 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Any person or agency entitled to receive payments for court-ordered restitution or for any fees, fines, assessments or costs levied by the court for the current or for any prior month or months, or the legal representative or the person or agency may initiate income apportionment proceedings by filing with the court a notice of delinquency or other notice of enforcement. Notice shall be served upon the obligor in the same manner prescribed for the

service of summons in a civil action. The notice shall inform the obligor of the following:

1. The amount of money owed, if any;

2. That the obligor may object to all or any part of the notice at a hearing which will be held at a given location on a date specified in the notice to show cause why the obligor should not be determined liable for the relief requested in the notice;

3. That at the hearing the obligor may contest the allegations in the notice only with regards to mistake of identity, or to the existence or the amount of money owed; and

4. That the apportionment shall remain in effect for as long as current payment is due or arrearages remain unpaid and that any payment will not prevent an income apportionment from taking effect.

B. 1. The court shall promptly hear and determine the matter and, unless the obligor successfully shows that there is a mistake of identity or a mistake as to the existence or amount of the obligation owed, the court shall enter a judgment, determine the amount of judgment payments, if any, and order that the income apportionment take effect against the disposable earnings or other income of the obligor.

2. The court may order an obligor to pay all court costs and attorneys' fees involved in an income apportionment proceeding pursuant to this subsection.

3. The order shall be a final judgment for purposes of appeal. The effect of the income apportionment shall not be stayed on appeal except by order of the court.

C. Once an income apportionment has been ordered by the court, the applicant shall file the original notice of income apportionment with the court and send a copy of the notice of income apportionment to the payor to effectuate the apportionment pursuant to subsection E of this section.

D. If the obligor fails to appear at the hearing, the court shall enter an order granting judgment for the amount of any arrearage, establishing a judgment payment plan, if appropriate, and approving the income apportionment. After the court has ordered an income apportionment, the applicant shall file the original notice with the court and send a copy of the notice of income apportionment to the payor pursuant to subsection E of this section to effectuate the apportionment.

E. 1. The notice of income apportionment required pursuant to subsections B, C, and D of this section shall be sent by the applicant to the payor on a standardized form prescribed by the Office of the Administrative Director of the Courts. The notice shall be sent by certified mail, return receipt requested or served according to law. The payor shall be required to comply with the provisions of this subsection and the provisions stated in the notice.

2. The income apportionment shall take effect on the next payment of earnings to the obligor after the payor receives notice thereof and the amount withheld shall be sent to the person or entity entitled to the payment within seven (7) days after the date upon which the obligor is paid. The payor shall include with each payment a statement reporting the date on which the obligor's payment obligation was withheld.

3. Each pay period the payor shall withhold the amounts specified in the notice from the obligor's income and earnings. The amount withheld by the payor shall not exceed twenty-five percent (25%) of the obligor's disposable income.

4. The income apportionment is binding upon the payor until released or until further order of the court.

5. If the amount of payment due under all income apportionments against the obligor exceeds the maximum amount authorized by paragraph 3 of this section, the payor shall pay the amount due up

to the statutory limit, and the payor shall send written notice to the person or agency designated to receive payments that the amount due exceeds the amount subject to withholding. If the payor fails to pay or notify as required herein, the payor may be liable for an amount up to the accumulated amount that is due and owing upon receipt of the notice.

6. If the payor is the obligor's employer, the payor shall send written notice to the person or agency designated to receive payments within ten (10) days of the date the obligor terminates employment, and shall provide the obligor's last-known address and the name of the obligor's new employer, if known.

7. If the payor has no income due or to be due to the obligor in the payor's possession or control or if the obligor has terminated employment with the payor prior to the receipt of notice required pursuant to subsection C of this section, the payor shall send written notice to the person or agency designated to receive payments within ten (10) days of receipt of the notice. Failure to notify the person or agency entitled to payment and the court within the required time limit may subject the payor to liability for an amount up to the accumulated amount that is due and owing upon receipt of the notice.

8. The payor is liable for any amount up to the accumulated amount that should have been withheld and paid, and may be fined up to Two Hundred Dollars (\$200.00) for each failure to make the required deductions if the payor:

- a. fails to withhold or pay the amount owed in accordance with the provisions of the income apportionment notice, or
- b. fails to notify the person or agency designated to receive payments as required.

9. The payor may combine withheld amounts from earnings of two or more obligors subject to income apportionment in a single payment

and separately identify that portion of the single payment which is attributable to each individual obligor.

10. An income apportionment issued pursuant to the provisions of this section shall have priority over any prior or subsequent garnishments of the same wages, except income assignments issued pursuant to the provisions of Section 1171.3 of Title 12 of the Oklahoma Statutes and garnishments for support issued pursuant to the provisions of Section 1173.1 of Title 12 of the Oklahoma Statutes and except as may otherwise be provided for in this section.

11. The payor may deduct from any earnings of the obligor a sum not exceeding Five Dollars (\$5.00) per pay period but not to exceed Ten Dollars (\$10.00) per month as reimbursement for costs incurred by the payor for the income apportionment.

12. The apportionment shall remain effective regardless of a change of payor.

13. The income apportionment issued pursuant to this section shall remain in effect for as long as current payment is due or until all arrearages for amounts owed are paid, whichever is later. Payment of any arrearages shall not prevent the income apportionment from taking effect.

14. The payor may not discipline, suspend, discharge, or refuse to promote an obligor because of an apportionment executed pursuant to this section. Any payor who violates this section shall be liable to the obligor for all income, wages, and employment benefits lost by the obligor from the period of unlawful discipline, suspension, discharge, or refusal to promote to the reinstatement or promotion.

F. Upon written notification of the name and address of a new employer or payor and payment of the required fees for mailing by the person or agency designated to receive payments, the applicant

shall send a new notice of income apportionment pursuant to subsection E of this section.

G. Any existing order for the types of payments provided for in this section or income apportionment which is brought before the court shall be modified by the court to conform to the provisions of this section.

H. Any person obligated to make payments pursuant to this section, who has left or is beyond the jurisdiction of the court, may be prosecuted under any other proceedings available pursuant to the laws of this state for the enforcement of the obligation.

SECTION 4. AMENDATORY 12 O.S. 1991, Section 1173, as last amended by Section 14, Chapter 293, O.S.L. 1999 (12 O.S. Supp. 2000, Section 1173), is amended to read as follows:

Section 1173. A. Any judgment creditor may obtain a noncontinuing lien on earnings. For the purposes of this section, "earnings" means any form of payment to an individual including, but not limited to, salary, commission, or other compensation, but does not include reimbursements for travel expenses for state employees.

B. A noncontinuing earnings garnishment shall be commenced by filing the affidavit provided for by Section 1172 of this title.

C. The form for the summons required by this section shall be prescribed by the Office of the Administrative Office Director of the Courts.

D. The summons shall be served upon the garnishee, together with a copy of the judgment creditor's affidavit, a garnishee's answer form, notice of garnishment and request for hearing, and claim for exemptions, in the manner provided for in Section 2004 of this title and shall be returned with proof of service within ten (10) days of its date.

E. The garnishee's answer shall be on a form prescribed by the Office of the Administrative Office Director of the Courts.

F. Within seven (7) days after the end of the defendant's then-current pay period or thirty (30) days from the date of service of the garnishment summons, whichever is earlier, the garnishee shall file the answer with the court clerk and the garnishee shall pay the amount withheld from the pay period to the judgment creditor's attorney or to the judgment creditor, if there is no attorney, with a copy of the answer which shall state:

1. Whether the garnishee was the employer of or indebted or under any liability to the defendant named in the notice in any manner or upon any account for earnings or wages, specifying, as applicable, the beginning and ending dates of the pay period existing at the time of the service of the affidavit and summons, the total amounts earned in the pay period, and all of the facts and circumstances necessary to a complete understanding of the indebtedness or liability. When the garnishee shall be in doubt respecting the liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;

2. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to the property, the facts and circumstances in the affidavit;

3. At the garnishee's option, any claim of exemption from execution on the part of the defendant or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;

4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person makes claim, at the garnishee's option, the names and addresses of other claimants and, so far as known, the nature of the claims; and

5. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.

G. The garnishment summons served on the garnishee under this section is a lien on the defendant's property due at the time of service or the effective date of the summons to the extent the property is not exempt from garnishment.

H. 1. A garnishment lien under this section has priority over any subsequent garnishment lien or garnishment summons served on the garnishee.

2. When a garnishment summons is served under this section on a garnishee while a previous garnishment lien is still in effect, the garnishee shall answer the subsequent garnishment lien or garnishment summons by stating that the garnishee is presently holding defendant's property under a previous garnishment lien or garnishment summons and by giving the date when all previous garnishment liens or garnishment summonses are expected to end.

I. 1. When a postjudgment noncontinuing earnings garnishment under ~~Section 1173~~ of this title section or a continuing earnings garnishment under Section 1173.4 of this title is issued against a defendant already subject to an income assignment for child support, or an income apportionment pursuant to Section 3 of this act, or both, the garnishee shall determine the maximum percentage of the defendant's disposable earnings according to the provisions of Section 1171.2 of this title and then deduct from that percentage the actual percentage of the defendant's disposable earnings actually withheld under ~~the~~ any income assignment or income apportionment. The resulting percentage shall be the amount to be withheld by the garnishee, not to exceed twenty-five percent (25%).

2. For any involuntary legal or equitable procedures through which the earnings of any individual are required to be withheld for the payment of any debt which has statutory priority over this

section, the amount withheld pursuant to a garnishment under this section shall be reduced by the actual sums withheld pursuant to such other involuntary process.

SECTION 5. AMENDATORY 12 O.S. 1991, Section 1173.4, as last amended by Section 15, Chapter 293, O.S.L. 1999 (12 O.S. Supp. 2000, Section 1173.4), is amended to read as follows:

Section 1173.4 A. Any judgment creditor may obtain a continuing lien on earnings. For the purposes of this section, "earnings" means any form of payment to an individual including, but not limited to, salary, wages, commission, or other compensation, but does not include reimbursements for travel expenses for state employees.

B. A continuing earnings garnishment shall be commenced by filing the affidavit provided for by Section 1172 of this title.

C. The summons required by this section shall be on a form prescribed by the Administrative Office of the Courts.

D. The summons required by this section shall be served upon each of the garnishees, together with a copy of the judgment creditor's affidavit, a garnishee's answer form, notice of garnishment and request for hearing, and claim for exemptions, in the manner provided for in Section 2004 of this title and shall be returned with proof of service within ten (10) days of its date.

E. The garnishee's answer shall be on a form prescribed by the Administrative Office of the Courts.

F. Within seven (7) days after the end of each pay period, or, if the judgment debtor does not have regular pay periods, after any payment by the garnishee to the judgment debtor, the garnishee shall file an answer with the court clerk, and pay the amount withheld to the judgment creditor's attorney or to the judgment creditor, if there is no attorney, together with a copy of the answer which shall state:

1. Whether the garnishee was the employer of the defendant named in the notice, was indebted to the defendant, or was under any liability to the defendant in any manner or upon any account for earnings, specifying the beginning and ending dates of the pay period, if applicable, existing at the time of the service of the affidavit and summons, the total amounts earned in the entire pay period, and all of the facts and circumstances necessary to a complete understanding of any indebtedness or liability. When the garnishee shall be in doubt respecting the liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;

2. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to the property, the facts and circumstances in the affidavit;

3. At the garnishee's option, any claim of exemption from execution on the part of the defendant or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;

4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person makes claim, at the garnishee's option, the names and addresses of other claimants and, so far as known, the nature of their claims; and

5. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.

G. The garnishment summons served on the garnishee under this section is a lien on the defendant's property due at the time of service or the effective date of the summons, to the extent the property is not exempt from garnishment. This lien attaches to subsequent nonexempt earnings until one of the following occurs:

1. The total earnings subject to the lien equals the balance of the judgment against the defendant owing to the plaintiff;

2. The employment relationship is terminated;

3. The judgment against the defendant is vacated, modified, or satisfied in full;

4. The summons is dismissed; or

5. One hundred eighty (180) days from the date of service of the affidavit and summons have elapsed; provided, an affidavit and summons shall continue in effect and shall apply to a pay period beginning before the end of the one hundred eighty-day period even if the conclusion extends beyond the end of the period.

H. 1. A garnishment lien under this section has priority over any subsequent garnishment lien or garnishment summons served on the garnishee during the period it is in effect.

2. a. When a garnishment summons is served under this section on a garnishee while a previous garnishment lien is still in effect, the garnishee shall answer the subsequent garnishment lien or garnishment summons by stating that the garnishee is presently holding defendant's property under a previous garnishment lien or garnishment summons, and by giving the date when all previous garnishment liens or garnishment summons are expected to end.

b. The subsequent summons is not effective if a summons or lien on the same cause of action is pending at the time of service unless the subsequent summons in the same cause of action is served after the one-hundred-fiftieth day of the previous garnishment lien.

I. 1. When a postjudgment wage garnishment under Section 1173 of this title or a continuing earnings garnishment under this section is issued against a defendant already subject to an income assignment for child support, or an income apportionment pursuant to

Section 3 of this act, or both, the garnishee shall determine the maximum percentage of the defendant's disposable earnings according to the provisions of Section 1171.2 of this title and then deduct from that percentage the actual percentage of the defendant's disposable earnings actually withheld under ~~the~~ any income assignment or income apportionment. The resulting percentage shall be the amount to be withheld by the garnishee, not to exceed twenty-five percent (25%).

2. For any involuntary legal or equitable procedures through which the earnings of any individual are required to be withheld for the payment of any debt which has statutory priority over this section, the amount withheld pursuant to a garnishment under this section shall be reduced by the actual sums withheld pursuant to such other involuntary process.

J. A continuing earnings garnishment may be suspended or modified for a specific period of time within the effective period of the garnishment by the judgment creditor upon agreement with the judgment debtor, which agreement shall be in writing and filed by the judgment creditor with the clerk of the court in which the judgment was entered, and a copy of which shall be mailed by first-class mail, postage prepaid by the judgment creditor to the garnishee.

K. Any garnishment issued against a debtor already subject to a continuing or noncontinuing earnings garnishment shall take effect immediately upon the conclusion of the prior garnishment, and shall be effective for its full period of time or as otherwise provided in this section.

SECTION 6. This act shall become effective November 1, 2001.

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