ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 1269

By: Trebilcock and Liotta of the House

and

Pruitt of the Senate

(civil procedure - amending 12 O.S., Section 1148.14 - forcible entry and detainer action - effective date)

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

"[civil procedure – venue – liens – garnishment – repealer – codification - effective date]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28.1 of Title 12, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of law, any judicial process which is allowed or required by law to be issued or processed by a district court clerk or deputy may be issued or processed by a duly appointed municipal court clerk or deputy when authorized by interlocal agreement entered into pursuant to Sections 1001 et seq. of Title 74 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 12 O.S. 2001, Section 139, is amended to read as follows:

Section 139. Every other action must be brought in the county in which the defendant or some one of the defendants resides or resided at the time the claim arose, or may be summoned; ~~except claims against makers of notes, claims, or other indebtedness which~~

~~have been assigned, sold or transferred by or from the original payee or obligee, which claims against such original maker of such notes, claims or indebtedness can only be brought in the county in which the said maker of such note, claim or indebtedness or some one of the original makers of such note, claim or indebtedness resides. Provided~~ provided, however, this section shall not in any way change or limit Section ~~4671 of the Revised Laws of Oklahoma, 1910~~ 131 of this title.

SECTION 3. AMENDATORY 12 O.S. 2001, Section 706.2, is amended to read as follows:

Section 706.2 In the event of an appeal from a money judgment granted by a court of this state, the lien of such judgment, and any lien by virtue of an attachment issued and levied in the action in which such judgment was granted, shall cease when the judgment debtor or debtors deposit with the clerk of the court in which such judgment was granted cash sufficient to cover the whole amount of the judgment, including interest, costs, and any attorneys fees, together with costs and interest on the appeal. ~~Such cash deposit shall be accompanied by a written statement executed by the judgment debtor or debtors~~ This amount shall be determined by court order upon application of the judgment debtor indicating that such deposit is made to discharge the lien of the judgment and any lien by virtue of an attachment issued and levied in the action. The cash deposit shall be accompanied by the statement of ownership required pursuant to Section 151.1 of Title 28 of the Oklahoma Statutes.

It shall be the duty of the judgment debtor to deliver the court order of deposit to the court clerk, department head or supervisor personally. Upon receipt of such a cash deposit, statement of ownership and ~~written statement~~ an order of the court directing deposit, it shall be the duty of the court clerk to immediately record receipt of the ~~statement~~ order and the amount of the cash deposit upon the appearance docket in the cause. It also shall be

the duty of the court clerk to place the cash deposit in the court clerk's official depository account and to hold the deposit in an interest-bearing account, unless otherwise ordered by the court, pending final determination of the action. The court clerk shall mail notice of receipt of the cash deposit to counsel for the judgment creditor or, if the judgment creditor is not represented by counsel, to the judgment creditor at the last-known address ~~of the judgment creditor, which~~ provided by the judgment debtor's application. The notice shall contain a statement that, if the judgment creditor does not file with the court a response or objection to the cash deposit within ~~fifteen (15)~~ twenty (20) days after the mailing of the notice to the judgment creditor, the judgment lien may be released. This objection period shall not be extended because of mailing time or for intervening weekends or holidays.

If no objection is filed with the court by the judgment creditor within ~~fifteen (15)~~ twenty (20) days after the mailing of the notice, the court clerk, upon request of the judgment debtor, shall prepare a Release of Judgment Lien for the judgment debtor on the form provided by the Administrative Director of the Courts. Instructions shall be printed on the Release of Judgment Lien 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. The lien of the judgment upon real estate of the judgment debtor in a county shall be released when the Release of Judgment Lien is filed in the office of the county clerk of that county. The judgment debtor making the deposit shall pay all costs and recording fees relating to the release procedure.

Upon final determination of the appeal, the court may order the deposit together with accrued interest to be applied to any final judgment granted against the depositor or depositors, and refund any balance in excess of the judgment to the depositor or depositors.

In the event judgment against the depositor or depositors is reversed in its entirety, the whole amount of the cash deposit together with accrued interest shall be refunded to the depositor or depositors.

A judgment debtor may also apply to the district court where the judgment was rendered for an order releasing a judgment lien to permit a particular transfer of property otherwise subject to the judgment lien on such terms as the court deems proper for the protection of the parties. Such a release of judgment lien may be granted only upon notice to the judgment creditor and hearing, and if granted the court shall endeavor to fully protect the rights of the judgment creditor to the security otherwise afforded by the judgment lien, for example, by determining the adequacy of consideration for the property and directing that such consideration be deposited into the court registry as security for the judgment.

SECTION 4. AMENDATORY 12 O.S. 2001, Section 842, is amended to read as follows:

Section 842. A. At any time after a final judgment, order, or decree is filed, on application of the judgment creditor, a judge of the court in which the final judgment, order, or decree was rendered shall order the judgment debtor to appear before the judge, or a referee appointed by the judge, at a time and place specified in the order, to answer concerning the judgment debtor’s property. The judge may, by order, enjoin the judgment debtor from alienating, concealing, or encumbering any of the judgment debtor’s nonexempt property pending the hearing and further order of the court. Upon the judgment debtor's disclosure of any nonexempt property, proceedings as provided by law may be had for the application of the property to the satisfaction of the judgment. <u>If the judgment debtor is personally served with an order to appear pursuant to this section, the judge issuing the order may authorize the issuance of</u>

either a contempt citation or a bench warrant for the judgment debtor's failure to comply with the order.

B. At any time after a final judgment, order, or decree is filed, an attorney for a judgment creditor may:

1. Subpoena the judgment debtor, pursuant to Section 2004.1 of this title, to appear at any place in the county in which the judgment, order, or decree was rendered, or the judgment debtor's county of residence, to answer concerning the judgment debtor's property, income, or liabilities, or to produce documents concerning the debtor's property, income, or liabilities. The judgment debtor shall not be entitled to an attendance fee or mileage;

2. Subpoena any person, pursuant to Section 2004.1 of this title, to appear at any place in the county where the person is located, or where service may otherwise be had on the person, to answer concerning the judgment debtor's property, income, or liabilities, or to produce documents concerning the judgment debtor's property, income, or liabilities; or

3. Serve interrogatories, requests for admissions, or request for production of documents, pursuant to Section 3224 et. seq. of this title, upon the judgment debtor, concerning the judgment debtor's property, income, or liabilities.

C. Failure by any person, without adequate excuse, to obey a subpoena issued and served pursuant to this section by either personal service or other service authorized by Section 2004 of this title may be deemed a contempt of the court from which the subpoena issued.

D. In addition to sums otherwise due under a final judgment, order, or decree if an order, subpoena, or discovery request is served upon the judgment debtor or any person under this section, the judgment creditor shall be entitled to costs of service and, if represented by an attorney, to an attorney's fee of Seventy-five Dollars ($75.00); provided, attorney's fees awarded pursuant to this

subsection relating to a judgment, order, or decree shall not exceed One Hundred Fifty Dollars ($150.00) in any calendar year.

SECTION 5. AMENDATORY 12 O.S. 2001, Section 1148.14, is amended to read as follows:

Section 1148.14 An action for forcible entry and detainer brought pursuant to procedures prescribed otherwise in this title standing alone or when joined with a claim for recovery of rent, damages to the premises, or a claim arising under the Oklahoma Residential Landlord and Tenant Act, or for claims for the recovery of rent or damages to the premises as they pertain to mobile home parks or manufactured home developments whereby a landlord and tenant relationship exists in relation to the lot where a mobile home, manufactured home or trailer that is used as a dwelling, as defined by the Oklahoma Residential Landlord and Tenant Act, rests, where the total recovery sought, exclusive of ~~attorney's~~ attorney fees and other court costs, does not exceed the jurisdictional amount for the small claims court, shall be placed on the small claims docket of the district court. The district courts may provide by court rule that any action for forcible entry and detainer may be assigned to the small claims division for determination of the right to possession, regardless of the underlying amount in controversy, at the conclusion of which, the matter shall be returned to the assigned judge for further proceedings. The court clerk shall in connection with such actions prepare the affidavit, by which the action is commenced, and the summons, and generally assist unrepresented plaintiffs to the same extent that he or she is now required so to do under the Small Claims Procedure Act, Section 1751 et seq. of this title.

SECTION 6. AMENDATORY 12 O.S. 2001, Section 1172, is amended to read as follows:

Section 1172. A. Garnishment proceedings, whether prejudgment or postjudgment, shall be commenced by the filing of an affidavit,

on a form prescribed by the Administrative Director of the Courts, stating:

1. The name(s) of the plaintiff(s);

2. The name(s) of the defendant(s);

3. ~~The~~ In the case of prejudgment garnishments, the amount of the plaintiff's original claim against the defendant or defendants over and above all offsets;

4. In the case of postjudgment garnishments, the amount of ~~any interest, court costs and attorneys' fees awarded, stated separately~~ the interest bearing balance;

5. In the case of postjudgment garnishments, the ~~rate and the date the interest begins to accrue~~ current applicable interest rate, and the amounts of any interest, court costs and attorney fees, stated separately, which have accrued subsequent to the date of the interest bearing balance in paragraph 4 of this subsection; and

6. That the plaintiff verily believes that some person, naming him, whether within or without the county, is indebted to or has property in his possession or under his control belonging to the defendant, or either or any of the defendants, in the action or execution and that the indebtedness or property is, to the best of the knowledge and belief of the person making such affidavit, not by law exempt from seizure or sale upon execution.

B. The affidavit may be filed by the plaintiff or the plaintiff's attorney at or before the time of filing of a garnishment summons.

C. Only one garnishee may be embraced in any affidavit or garnishment summons.

SECTION 7. AMENDATORY 12 O.S. 2001, 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, regardless of whether the amounts withheld by the garnishee are reduced by the court or by agreement of the parties.

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, 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 income assignment. 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 8. AMENDATORY 12 O.S. 2001, Section 1773, is amended to read as follows:

Section 1773. A. Any action under the Small Claims Procedure Act which is not at issue and in which no pleading has been filed or other action taken for one (1) year and in which no motion has been pending during any part of the year shall be dismissed without prejudice by the court on its own motion after notice to the parties or their attorneys of record; providing, the court may, upon written application and for good cause shown by order in writing, allow the action to remain on its docket.

B. If service of process under the Small Claims Procedure Act is not made upon a defendant within ~~one hundred eighty (180) days~~ one (1) year after the filing of the affidavit, the action shall be

deemed to have been dismissed without prejudice as to that defendant. The action shall not be deemed to have been dismissed where a summons was served on the defendant within ~~one hundred eighty (180) days~~ one (1) year after the filing of the affidavit and a court later holds that the summons or its service was invalid. After a court quashes a summons or its service, a new summons may be served on the defendant within a time specified by the judge. If the new summons is not served within the specified time, the action shall be deemed to have been dismissed without prejudice as to that defendant. This subsection shall not apply with respect to a defendant who has been in a foreign country for ~~one hundred eighty (180) days~~ one (1) year following the filing of the affidavit.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2003.2 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Any person who has, on three or more prior occasions, brought a civil action or appeal against any state, county or municipal governmental agency, officer or employee, in a court of this state or any court of the United States that has been dismissed on grounds that the case was frivolous, malicious, or failed to state a claim upon which relief could be granted, may not proceed in a matter arising out of a civil case or upon an original action or appeal without prepayment of all fees required by law, unless the person is under immediate danger of serious physical injury directly related to the lawsuit sought to be filed.

B. The Administrative Director of the Courts shall maintain a registry of persons who have had cases dismissed as frivolous, malicious, or for failure to state a claim upon which relief can be granted. The Attorney General, the General Counsel of the Department of Corrections, district attorneys and general counsels of state, county or municipal agencies shall forward to the Administrative Director of the Courts copies of all orders in cases

against governmental agencies or employees in which there was a finding that the case filed by a plaintiff was dismissed as frivolous, malicious or for failure to state a claim upon which relief can be granted.

C. Any person who has brought three prior actions which were dismissed as frivolous, malicious or for failure to state a claim upon which relief can be granted, upon disposition of any subsequent actions dismissed on these grounds, shall be held in direct contempt of court and sanctioned in an amount not exceeding One Thousand Dollars ($1,000.00) and shall be required to pay all court costs, attorney fees and other necessary litigation expenses.

SECTION 10. AMENDATORY 12 O.S. 2001, Section 2004, as amended by Section 7, Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2002, Section 2004), is amended to read as follows:

Section 2004.

PROCESS

A. SUMMONS: ISSUANCE. Upon filing of the petition, the clerk shall forthwith issue a summons. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

B. SUMMONS: FORM.

1. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise, the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of failure to appear, judgment by default will be rendered against the defendant for the relief demanded in the petition.

2. A judgment by default shall not be different in kind from or exceed in amount that prayed for in either the demand for judgment or in cases not sounding in contract in a notice which has been given the party against whom default judgment is sought. Except as

to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his or her pleadings.

C. BY WHOM SERVED: PERSON TO BE SERVED.

1. SERVICE BY PERSONAL DELIVERY.

a. At the election of the plaintiff, process, other than a subpoena, shall be served by a sheriff or deputy sheriff, a person licensed to make service of process in civil cases, or a person specially appointed for that purpose. The court shall freely make special appointments to serve all process, other than a subpoena, under this paragraph.

b. A summons to be served by the sheriff or deputy sheriff shall be delivered to the sheriff by the court clerk or an attorney of record for the plaintiff. When a summons, subpoena, or other process is to be served by the sheriff or deputy sheriff of another county, the court clerk shall mail it, together with his voucher for the fees collected for the service, to the sheriff of that county. The sheriff shall deposit the voucher in the Sheriff's Service Fee Account created pursuant to Section 514.1 of Title 19 of the Oklahoma Statutes. The sheriff or deputy sheriff shall serve the process in the manner that other process issued out of the court of the sheriff's own county is served. A summons to be served by a person licensed to make service of process in civil cases or by a person specially appointed for that purpose shall be delivered by an attorney of record for the plaintiff to such person.

c. Service shall be made as follows:

(1) Upon an individual other than an infant who is less than fifteen (15) years of age or an incompetent person, by delivering a copy of the summons and of the petition personally or by leaving copies thereof at the person's dwelling house or usual place of abode with some person then residing therein who is fifteen (15) years of age or older or by delivering a copy of the summons and of the petition to an agent authorized by appointment or by law to receive service of process;

(2) Upon an infant who is less than fifteen (15) years of age, by serving the summons and petition personally and upon either of the infant's parents or guardian, or if they cannot be found, then upon the person having the care or control of the infant or with whom the infant lives; and upon an incompetent person by serving the summons and petition personally and upon the incompetent person's guardian;

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the petition to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant;

(4) Upon the United States or an officer or agency thereof in the manner specified by Federal Rule of Civil Procedure 4;

(5) Upon a state, county, school district, public trust or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the petition to the officer or individual designated by specific statute; however, if there is no statute, then upon the chief executive officer or a clerk, secretary, or other official whose duty it is to maintain the official records of the organization; and

(6) Upon an inmate incarcerated in an institution under the jurisdiction and control of the Department of Corrections, by delivering a copy of the summons and of the petition to the warden or superintendent or the designee of the warden or superintendent of the institution where the inmate is housed. It shall be the duty of the receiving warden or superintendent or a designee to promptly deliver the summons and petition to the inmate named therein. The warden or superintendent or his or her designee shall reject service of process for any inmate who is not actually present in said institution.

2. SERVICE BY MAIL.

a. At the election of the plaintiff, a summons and petition may be served by mail by the plaintiff's attorney, any person authorized to serve process pursuant to subparagraph a of paragraph 1 of this subsection, or by the court clerk upon a defendant of

any class referred to in division (1), (3), or (5) of subparagraph c of paragraph 1 of this subsection. Service by mail shall be effective on the date of receipt or if refused, on the date of refusal of the summons and petition by the defendant.

b. Service by mail shall be accomplished by mailing a copy of the summons and petition by certified mail, return receipt requested and delivery restricted to the addressee. When there is more than one defendant, the summons and a copy of the petition or order shall be mailed in a separate envelope to each defendant. If the summons is to be served by mail by the court clerk, the court clerk shall enclose the summons and a copy of the petition or order of the court to be served in an envelope, prepared by the plaintiff, addressed to the defendant, or to the resident service agent if one has been appointed. The court clerk shall prepay the postage and mail the envelope to the defendant, or service agent, by certified mail, return receipt requested and delivery restricted to the addressee. The return receipt shall be prepared by the plaintiff. Service by mail to a garnishee shall be accomplished by mailing a copy of the summons and notice by certified mail, return receipt requested, and at the election of the judgment creditor by restricted delivery, to the addressee.

c. Service by mail shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. Acceptance or refusal of service by mail by a person who is fifteen

(15) years of age or older who resides at the defendant's dwelling house or usual place of abode shall constitute acceptance or refusal by the party addressed. In the case of an entity described in division (3) of subparagraph c of paragraph 1 of this subsection, acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail. In the case of a state municipal corporation, or other governmental organization thereof subject to suit, acceptance or refusal by an employee of the office of the officials specified in division (5) of subparagraph c of paragraph 1 of this subsection who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. If delivery of the process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default, the person elected by plaintiff pursuant to subparagraph a of this paragraph to serve the process shall mail to the defendant by first-class mail a copy of the summons and petition and a notice prepared by the plaintiff that despite such refusal the case will proceed and that judgment by default will be rendered against him unless he appears to defend the suit. Any default or judgment by default shall be set aside upon motion of the defendant in the

manner prescribed in Section 1031.1 of this title, or upon petition of the defendant in the manner prescribed in Section 1033 of this title if the defendant demonstrates to the court that the return receipt was signed or delivery was refused by an unauthorized person. A petition shall be filed within one (1) year after the defendant has notice of the default or judgment by default but in no event more than two (2) years after the filing of the judgment.

3. SERVICE BY PUBLICATION.

a. Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or the plaintiff’s attorney, or in a separate affidavit by the plaintiff or the plaintiff’s attorney filed with the court, that with due diligence service cannot be made upon the defendant by any other method.

b. Service of summons upon the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or other association may be made by publication when it is stated in a petition, verified by the plaintiff or the plaintiff's attorney, or in a separate affidavit by the plaintiff or the plaintiff's attorney filed with the court, that the person who verified the petition or the affidavit does not know and with due diligence cannot ascertain the following:

(1) whether a person named as defendant is living or dead, and, if dead, the names or whereabouts of the person’s successors, if any,

(2) the names or whereabouts of the unknown successors, if any, of a named decedent,

(3) whether a partnership, corporation, or other association named as a defendant continues to have legal existence or not; or the names or whereabouts of its officers or successors,

(4) whether any person designated in a record as a trustee continues to be the trustee; or the names or whereabouts of the successors of the trustee, or

(5) the names or whereabouts of the owners or holders of special assessment or improvement bonds, or any other bonds, sewer warrants or tax bills.

c. Service pursuant to this paragraph shall be made by publication of a notice, signed by the court clerk, one (1) day a week for three (3) consecutive weeks in a newspaper authorized by law to publish legal notices which is published in the county where the petition is filed. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. All named parties and their unknown successors who may be served by publication may be included in one notice. The notice shall state the court in which the petition is filed and the names of the plaintiff and the parties served by publication, and shall designate the parties whose unknown successors are being served. The notice shall also state that the named defendants and their unknown successors have been sued and must answer the petition on or before a time to be stated (which shall not be less than forty-one (41) days from the date of the first publication), or judgment, the nature of which shall be stated, will be rendered

accordingly. If jurisdiction of the court is based on property, any real property subject to the jurisdiction of the court and any property or debts to be attached or garnished must be described in the notice.

(1) When the recovery of money is sought, it is not necessary for the publication notice to state the separate items involved, but the total amount that is claimed must be stated. When interest is claimed, it is not necessary to state the rate of interest, the date from which interest is claimed, or that interest is claimed until the obligation is paid.

(2) It is not necessary for the publication notice to state that the judgment will include recovery of costs in order for a judgment following the publication notice to include costs of suit.

(3) In an action to quiet title to real property, it is not necessary for the publication notice to state the nature of the claim or interest of either party, and in describing the nature of the judgment that will be rendered should the defendant fail to answer, it is sufficient to state that a decree quieting plaintiff's title to the described property will be entered. It is not necessary to state that a decree forever barring the defendant from asserting any interest in or to the property is sought or will be entered if the defendant does not answer.

(4) In an action to foreclose a mortgage, it is sufficient that the publication notice state that if the defendant does not answer, the defendant's

interest in the property will be foreclosed. It is not necessary to state that a judgment forever barring the defendant from all right, title, interest, estate, property and equity of redemption in or to said property or any part thereof is requested or will be entered if the defendant does not answer.

d. Service by publication is complete when made in the manner and for the time prescribed in subparagraph c of this paragraph. Service by publication shall be proved by the affidavit of any person having knowledge of the publication. No default judgment may be entered on such service until proof of service by publication is filed with and approved by the court.

e. Before entry of a default judgment or order against a party who has been served solely by publication under this paragraph, the court shall conduct an inquiry to determine whether the plaintiff, or someone acting in his behalf, made a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of any named parties who have been served solely by publication under this paragraph. Before entry of a default judgment or order against the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation or association, the court shall conduct an inquiry to ascertain whether the requirements described in subparagraph b of this paragraph have been satisfied.

f. A party against whom a default judgment or order has been rendered, without other service than by publication in a newspaper, may, at any time within three (3) years after the filing of the judgment or

order, have the judgment or order set aside in the manner prescribed in Sections 1031.1 and 1033 of this title. Before the judgment or order is set aside, the applicant shall notify the adverse party of the intention to make an application and shall file a full answer to the petition, pay all costs if the court requires them to be paid, and satisfy the court by affidavit or other evidence that during the pendency of the action the applicant had no actual notice thereof in time to appear in court and make a defense. The title to any property which is the subject of and which passes to a purchaser in good faith by or in consequence of the judgment or order to be opened shall not be affected by any proceedings under this subparagraph. Nor shall proceedings under this subparagraph affect the title of any property sold before judgment under an attachment. The adverse party, on the hearing of an application to open a judgment or order as provided by this subparagraph, shall be allowed to present evidence to show that during the pendency of the action the applicant had notice thereof in time to appear in court and make a defense.

g. The term "successors" includes all heirs, executors, administrators, devisees, trustees, and assigns, immediate and remote, of a named individual, partnership, corporation, or association.

h. Service outside of the state does not give the court in personal jurisdiction over a defendant who is not subject to the jurisdiction of the courts of this state or who has not, either in person or through an

agent, submitted to the jurisdiction of the courts of this state.

4. SERVICE ON THE SECRETARY OF STATE.

a. Service of process on a domestic or foreign corporation may be made by serving the Secretary of State as the corporation's agent, if:

(1) there is no registered agent for the corporation listed in the records of the Secretary of State; or

(2) neither the registered agent nor an officer of the corporation could be found at the registered office of the corporation, when service of process was attempted.

b. Before resorting to service on the Secretary of State the plaintiff must have attempted service either in person or by mail on the corporation at:

(1) the corporation's last-known address shown on the records of the Franchise Tax Division of the Oklahoma Tax Commission, if any is listed there; and

(2) the corporation's last-known address shown on the records of the Secretary of State, if any is listed there; and

(3) the corporation's last address known to the plaintiff.

If any of these addresses are the same, the plaintiff is not required to attempt service more than once at any address. The plaintiff shall furnish the Secretary of State with a certified copy of the return or returns showing the attempted service.

c. Service on the Secretary of State shall be made by filing two (2) copies of the summons and petition with

the Secretary of State, notifying the Secretary of State that service is being made pursuant to the provisions of this paragraph, and paying the Secretary of State the fee prescribed in paragraph 7 of Section 1142 of Title 18 of the Oklahoma Statutes, which fee shall be taxed as part of the costs of the action, suit or proceeding if the plaintiff shall prevail therein. If a registered agent for the corporation is listed in the records of the Secretary of State, the plaintiff must also furnish a certified copy of the return showing that service on the registered agent has been attempted either in person or by mail, and that neither the registered agent nor an officer of the corporation could be found at the registered office of the corporation.

d. Within three (3) working days after receiving the summons and petition, the Secretary of State shall send notice by letter, certified mail, return receipt requested, directed to the corporation at its registered office or the last-known address found in the office of the Secretary of State, or if no address is found there, to the corporation's last-known address provided by the plaintiff. The notice shall enclose a copy of the summons and petition and any other papers served upon the Secretary of State. The corporation shall not be required to serve its answer until forty (40) days after service of the summons and petition on the Secretary of State.

e. Before entry of a default judgment or order against a corporation that has been served by serving the Secretary of State as its agent under this paragraph, the court shall determine whether the requirements of

this paragraph have been satisfied. A default judgment or order against a corporation that has been served only by service on the Secretary of State may be set aside upon motion of the corporation in the manner prescribed in Section 1031.1 of this title, or upon petition of the corporation in the manner prescribed in Section 1033 of this title, if the corporation demonstrates to the court that it had no actual notice of the action in time to appear and make its defense. A petition shall be filed within one (1) year after the corporation has notice of the default judgment or order but in no event more than two (2) years after the filing of the default judgment or order.

f. The Secretary of State shall maintain an alphabetical record of service setting forth the name of the plaintiff and defendant, the title, docket number, and nature of the proceeding in which the process has been served upon the defendant, the fact that service has been effected pursuant to the provisions of this paragraph, the return date thereof, and the date when the service was made. The Secretary of State shall not be required to retain this information for a period longer than five (5) years from receipt of the service of process.

g. The provisions of this paragraph shall not apply to a foreign insurance company doing business in this state.

5. SERVICE BY ACKNOWLEDGMENT. An acknowledgment on the back of the summons or the voluntary appearance of a defendant is equivalent to service.

6. SERVICE BY OTHER METHODS. If service cannot be made by personal delivery or by mail, a defendant of any class referred to in division (1) or (3) of subparagraph c of paragraph 1 of this subsection may be served as provided by court order in any manner which is reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.

7. NO SERVICE BY PRISONER. No prisoner in any jail, Department of Corrections facility, private prison, or parolee or probationer under supervision of the Department of Corrections shall be appointed by any court to serve process on any defendant, party or witness.

D. SUMMONS AND PETITION. The summons and petition shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. The failure to serve a copy of the petition with the summons is not a ground for dismissal for insufficiency of service of process, but on motion of the party served, the court may extend the time to answer or otherwise plead. If a summons and petition are served by personal delivery, the person serving the summons shall state on the copy that is left with the person served the date that service is made. This provision is not jurisdictional, but if the failure to comply with it prejudices the party served, the court, on motion of the party served, may extend the time to answer or otherwise plead.

E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

1. Service of the summons and petition may be made anywhere within this state in the manner provided by subsection C of this section.

2. When the exercise of jurisdiction is authorized by subsection F of this section, service of the summons and petition may be made outside this state:

a. by personal delivery in the manner prescribed for service within this state,

b. in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction,

c. in the manner prescribed by paragraph 2 of subsection C of this section,

d. as directed by the foreign authority in response to a letter rogatory,

e. in the manner prescribed by paragraph 3 of subsection C of this section only when permitted by subparagraphs a and b of paragraph 3 of subsection C of this section, or

f. as directed by the court.

3. Proof of service outside this state may be made in the manner prescribed by subsection G of this section, the order pursuant to which the service is made, or the law of the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction.

4. Service outside this state may be made by an individual permitted to make service of process under the law of this state or under the law of the place in which the service is made or who is designated to make service by a court of this state.

5. When subsection C of this section requires that in order to effect service one or more designated individuals be served, service outside this state under this section must be made upon the designated individual or individuals.

6. a. A court of this state may order service upon any person who is domiciled or can be found within this state of any document issued in connection with a proceeding in a tribunal outside this state. The order may be made upon application of any interested person or in response to a letter rogatory issued by a

tribunal outside this state and shall direct the manner of service.

b. Service in connection with a proceeding in a tribunal outside this state may be made within this state without an order of court.

c. Service under this paragraph does not, of itself, require the recognition or enforcement of an order, judgment, or decree rendered outside this state.

F. ASSERTION OF JURISDICTION. A court of this state may exercise jurisdiction on any basis consistent with the Constitution of this state and the Constitution of the United States.

G. RETURN.

1. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process, but the failure to make proof of service does not affect the validity of the service.

2. When process has been served by a sheriff or deputy sheriff and return thereof is filed in the office of the court clerk, a copy of the return shall be sent by the court clerk to the plaintiff's attorney within three (3) days after the return is filed. If service is made by a person other than a sheriff, deputy sheriff, or licensed process server, that person shall make affidavit thereof. The return shall set forth the name of the person served and the date, place, and method of service.

3. If service was by mail, the person mailing the summons and petition shall endorse on the copy of the summons or order of the court that is filed in the action the date and place of mailing and the date when service was receipted or service was rejected, and shall attach to the copy of the summons or order a copy of the return receipt or returned envelope, if and when received, showing whether the mailing was accepted, refused, or otherwise returned.

If the mailing was refused, the return shall also show the date and place of any subsequent mailing pursuant to paragraph 2 of subsection C of this section. When the summons and petition are mailed by the court clerk, the court clerk shall notify the plaintiff's attorney within three (3) days after receipt of the returned card or envelope showing that the card or envelope has been received.

H. AMENDMENT. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

I. SUMMONS: TIME LIMIT FOR SERVICE. If service of process is not made upon a defendant within ~~one hundred eighty (180) days~~ one (1) year after the filing of the petition and the plaintiff cannot show good cause why such service was not made within that period, the action may be dismissed as to that defendant without prejudice upon the court's own initiative with notice to the plaintiff or upon motion by any party if the motion is filed prior to service of summons upon a defendant more than one (1) year after the filing of the petition. The action shall not be dismissed where a summons was served on the defendant within ~~one hundred eighty (180) days~~ one (1) year after the filing of the petition and a court later holds that the summons or its service was invalid. After a court quashes a summons or its service, a new summons may be served on the defendant within a time specified by the judge. If the new summons is not served within the specified time, the action shall be deemed to have been dismissed without prejudice as to that defendant. This subsection shall not apply with respect to a defendant who has been outside of this state for ~~one hundred eighty (180) days~~ one (1) year following the filing of the petition.

SECTION 11. AMENDATORY 31 O.S. 2001, Section 1.1, is amended to read as follows:

Section 1.1 A. Following the issuance of an execution, attachment, or garnishment, except process to collect a judgment or order for child support or maintenance of children or in cases in which the court has limited or reduced the application of this section pursuant to Section 142.18 of Title 21 of the Oklahoma Statutes, the debtor may file with the court an application requesting a hearing to exempt from such process by reason of undue hardship that portion of any earnings from personal services necessary for the maintenance of a family or other dependents supported wholly or partially by the labor of the debtor. A debtor with no family or other dependents may not claim an exemption under this section. A hearing on the application shall be set and conducted in the manner provided by Section 1172.2 of Title 12 of the Oklahoma Statutes and subsection D of Section 1174 of Title 12 of the Oklahoma Statutes.

B. In determining the existence of an undue hardship, the court should consider the income and expenses of the family and other dependents, and the standard of living created by the income and expenses. The court should also consider the standard of living in relationship to the minimal subsistence needs of the debtor's family and other dependents, with comparison to the minimal subsistence standards in the community, in regard to basic shelter, food, clothing, personal necessities and transportation. The court should then determine if the lack of the funds sought to be exempt would be an undue hardship by creating less than a minimal level of subsistence. If deprivation of these earnings would create an undue hardship on the debtor and the family or other dependents the debtor supports, the court may:

1. Order all or a portion of the personal ~~wages~~ earnings exempt; or

2. In the case of a continuing ~~wage~~ earnings garnishment pursuant to Section 1173.4 of Title 12 of the Oklahoma Statutes, order all or a portion of the personal earnings withheld within thirty (30) days preceding the filing of the claim for exemption, exempt, modify or stay the garnishment for a period of time not to exceed the remainder of its term.

SECTION 12. AMENDATORY 42 O.S. 2001, Section 43, is amended to read as follows:

Section 43. A. Every hospital in the State of Oklahoma, which shall furnish emergency medical or other service to any patient injured by reason of an accident not covered by the Workers' Compensation Act, shall, if such injured party shall assert or maintain a claim against another for damages on account of such injuries, have a lien upon that part going or belonging to such patient of any recovery or sum had or collected or to be collected by such patient, or by his heirs, personal representatives or next of kin in the case of his death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the treatment, care and maintenance of such patient in such hospital up to the date of payment of such damages: Provided, however, that this lien shall be inferior to any lien or claim of any attorney or attorneys for handling the claim on behalf of such patient, his heirs or personal representatives; provided further, that the lien herein set forth shall not be applied or considered valid against any claim for amounts ~~due under the Workers' Compensation Act in this state~~ pursuant to the provisions of Title 85 of the Oklahoma Statutes.

B. In addition to the lien provided for in subsection A of this section, every hospital which performs medical services for any person injured as a result of the negligence or act or another shall have, if the injured person asserts or maintains a claim against an

insurer, a lien for the amount due for such medical services upon any monies payable by the insurer to the injured person.

C. No lien which is provided for in this section shall be effective unless, before the payment of any monies to the injured person, the person's attorney or legal representative as compensation for such injuries or death:

1. A written notice is sent setting forth an itemized or summary statement of the amount claimed identifying, to the extent known by the claimant, the insurance company and policy or policies against which the lien is asserted, if any, and containing the name and address of claimant, and to the extent known by the claimant, the injured person and the person, firm, or corporation against whom the claim is made, is filed on the mechanic's and materialmen's lien docket in the office of the county clerk of the county where the claimant is located; and

2. The claimant sends, by registered or certified mail, postage prepaid, a copy of the notice with a statement of the date of filing thereof to the person, firm, or corporation against whom the claim is made and to the injured person. The claimant shall also send a copy of the notice to the attorney for the injured person, if the name and address of the attorney is known to the claimant.

D. A lien created pursuant to this section may be enforced in a civil action in the district court of the county where the lien was filed. The action shall be brought within one (1) year after the claimant becomes aware of the final judgment, settlement or compromise of the claim asserted or maintained by or on behalf of the injured person. The practice, pleading, and proceedings in the action shall conform to the rules prescribed by the Oklahoma Pleading Code to the extend applicable.

SECTION 13. AMENDATORY 42 O.S. 2001, Section 46, is amended to read as follows:

Section 46. A. Every physician or medical corporation employing a physician who performs medical services for any person injured as a result of the negligence or act of another, shall, if the injured person asserts or maintains a claim against such other person for damages on account of such injuries, have a lien for the amount due for such medical services upon that part going or belonging to the injured person of any recovery or sum had or collected or to be collected by the injured person, or by his heirs, personal representative, or next of kin in the event of his death, whether by judgment, settlement, or compromise. Such lien shall be inferior to any lien or claim of any attorney handling the claim for or on behalf of the injured person. The lien shall not be applied or considered valid against any claim for amounts due pursuant to the provisions of Title 85 of the Oklahoma Statutes.

B. In addition to the lien provided for in subsection A of this section, every physician or medical corporation employing a physician who performs medical services for any person injured as a result of the negligence or act of another, shall have, if the injured person asserts or maintains a claim against an insurer, a lien for the amount due for such medical services upon any monies payable by the insurer to the injured person.

C. No lien which is provided for in this section shall be effective unless, before the payment of any monies to the injured person, his attorney, or legal representative as compensation for such injuries or death:

1. A written notice is sent setting forth an itemized or summary statement of the amount claimed, identifying, to the extent known by the claimant, the insurance company and policy or policies against which the lien is asserted, if any, and containing the name and address of the ~~physician claiming the lien~~ claimant and, to the extent known by claimant, the injured person, and the person, firm, or corporation against whom the claim is made, is filed on the

mechanic's and materialman's lien docket in the office of the county clerk of the county where the principal office of the ~~physician~~ claimant is located; and

2. The ~~physician~~ claimant sends, by registered or certified mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person, firm, or corporation against whom the claim is made and to the injured person. The ~~physician~~ claimant shall also send a copy of the notice to the attorney for the injured person, if the name and address of such attorney is known to the ~~physician~~ claimant.

D. The liens provided for in this section may be enforced by civil action in the district court of the county where the lien was filed. Such an action shall be brought within one (1) year after the ~~physician~~ claimant becomes aware of final judgment, settlement or compromise of the claim asserted or maintained by or on behalf of the injured person. The practice, pleading, and proceedings in the action shall conform to the rules prescribed by the Oklahoma Pleading Code to the extent applicable.

SECTION 14. AMENDATORY 42 O.S. 2001, Section 49, is amended to read as follows:

Section 49. A. Every person, company, governmental entity, or trust authority operating an ambulance service within this state who or which performs ambulance services for any person injured as a result of the negligent or intentional act of another shall, if the injured person asserts or maintains a claim against another person for damages on account of the injuries, have a lien for the amount due for the ambulance services upon any recovery or sum had or collected or to be collected by the injured person or the estate of the injured person in the event of the injured person's death, whether by judgment, settlement, or compromise. The lien shall be inferior to any lien or claim of any attorney representing the injured person. The lien shall not be applied or considered valid

against any claim for amounts due pursuant to the provisions of Title 85 of the Oklahoma Statutes.

B. In addition to the lien provided for in subsection A of this section, every person, company, governmental entity, or trust authority operating an ambulance service within this state who or which performs ambulance services for any person injured as a result of the negligent or intentional act of another shall have, if the injured person asserts or maintains a claim against an insurer, a lien for the amount due for the ambulance services upon any monies payable by the insurer to the injured person.

C. No lien which is provided for in this section shall be effective unless, before the payment of any monies to the injured person or the injured person's attorney or legal representative, as compensation for the injuries or death:

1. A written notice is sent setting forth an itemized or summary statement of the amount claimed, identifying, to the extent known by the claimant, the insurance company and policy or policies against which the lien is asserted, if any, and containing the name and address of the ~~person, company, governmental entity, or trust authority claiming the lien~~ claimant and, to the extent known by the claimant, the injured person, and the person, firm, or corporation against whom the claim is made, is filed on the mechanic's and materialman's lien docket in the office of the county clerk of the county where the principal office of the claimant is located; and

2. The claimant sends, by registered or certified mail, postage prepaid, a copy of the notice with a statement of the date of filing thereof to the person, firm, or corporation against whom the claim is made and to the injured person. The claimant shall also send a copy of the notice to the attorney for the injured person, if the name and address of the attorney is known to the claimant.

D. A lien created pursuant to this section may be enforced in a civil action in the district court of the county where the lien was

filed. ~~An~~ Such an action shall be brought within one (1) year after the claimant becomes aware of a final judgment, settlement, or compromise of the claim asserted or maintained by or on behalf of the injured person. The practice, pleading, and proceedings in the action shall conform to the rules prescribed by the Oklahoma Pleading Code to the extent applicable.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 50 of Title 42, unless there is created a duplication in numbering, reads as follows:

For liens and lien procedures under Sections 43, 46 and 49 of this title:

1. The statute of limitations for a civil action against the injured party for the amount due under the lien shall be extended by the period of time commencing the date the lien is filed and concluding on the date the claimant becomes aware of final judgment, settlement or compromise of the claim asserted or maintained by or on behalf of the injured person, the person's heirs or personal representatives.

2. The amount due the claimant secured by the lien shall include the costs of filing and mailing of the lien and lien notice as defined and limited in this section. The costs of filing shall be the amount charged by the county clerk. The costs for mailing by certified or registered mail shall be the amount charged by clerks of the district court for equivalent mailing. The inclusion of costs of filing and mailing shall be limited to once per injury, and shall not be included for amended liens or additional liens for subsequent services to the injured party.

SECTION 16. REPEALER 42 O.S. 2001, Section 44, is hereby repealed.

SECTION 17. This act shall become effective November 1, 2003."

Passed the Senate the 16th day of April, 2003.

_____
Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2003.

_____
Presiding Officer of the House
of Representatives