

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 943

By: Williamson of the Senate

3 and
4 Duncan of the House

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6
7
8 (child support - lien - reporting system -
9 compliance requirements - penalties - rules -
10 codification -
11 effective date)

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14 AUTHORS: Add the following House Coauthors: Kern and Luttrell

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

17 "An Act relating to child support; amending 31 O.S.
18 2001, Section 1, as last amended by Section 1,
19 Chapter 181, O.S.L. 2005 (31 O.S. Supp. 2006,
20 Section 1), which relates to property exempt from
21 attachment, execution or other forced sale;
22 excluding certain circumstance from exemption;
23 amending 43 O.S. 2001, Section 135, which relates to
24 lien for child support arrearage; modifying
procedures for child support lien; modifying certain
exception; defining term; requiring exchange of
certain information under specified circumstances;
requiring Department of Human Services to develop
and implement certain reporting system for specified
purpose; establishing compliance requirements for
certain companies; establishing certain lien

1 procedures; stating applicability of certain
2 retirement income provisions; establishing certain
3 penalties; requiring certain persons to provide
4 specified information; authorizing Department to
5 enter into certain contracts; limiting certain
6 liability; requiring promulgation of certain rules;
7 providing for codification; and providing an
8 effective date.

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

10 SECTION 1. AMENDATORY 31 O.S. 2001, Section 1, as last
11 amended by Section 1, Chapter 181, O.S.L. 2005 (31 O.S. Supp. 2006,
12 Section 1), is amended to read as follows:

13 Section 1. A. Except as otherwise provided in this title and
14 notwithstanding subsection B of this section, the following property
15 shall be reserved to every person residing in the state, exempt from
16 attachment or execution and every other species of forced sale for
17 the payment of debts, except as herein provided:

18 1. The home of such person, provided that such home is the
19 principal residence of such person;

20 2. A manufactured home, provided that such manufactured home is
21 the principal residence of such person;

22 3. All household and kitchen furniture held primarily for the
23 personal, family, educational or household use of such person or a
24 dependent of such person, including a personal computer and related
equipment;

1 4. Any lot or lots in a cemetery held for the purpose of
2 sepulcher;

3 5. Implements of husbandry necessary to farm the homestead and
4 tools, apparatus and books used in any trade or profession of such
5 person or a dependent of such person, not to exceed Ten Thousand
6 Dollars (\$10,000.00) in aggregate value;

7 6. All books, portraits and pictures that are held primarily
8 for the personal, family or household use of such person or a
9 dependent of such person;

10 7. The person's interest, not to exceed Four Thousand Dollars
11 (\$4,000.00) in aggregate value, in wearing apparel that is held
12 primarily for the personal, family or household use of such person
13 or a dependent of such person;

14 8. The person's interest, not to exceed Three Thousand Dollars
15 (\$3,000.00) in aggregate value, in wedding and anniversary rings;

16 9. All professionally prescribed health aids for such person or
17 a dependent of such person;

18 10. Five milk cows and their calves under six (6) months old,
19 that are held primarily for the personal, family or household use of
20 such person or a dependent of such person;

21 11. One hundred chickens, that are held primarily for the
22 personal, family or household use of such person or a dependent of
23 such person;

24

1 12. Two horses and two bridles and two saddles, that are held
2 primarily for the personal, family or household use of such person
3 or a dependent of such person;

4 13. Such person's interest, not to exceed Seven Thousand Five
5 Hundred Dollars (\$7,500.00) in value, in one motor vehicle;

6 14. Guns, not to exceed Two Thousand Dollars (\$2,000.00) in
7 aggregate value, that are held primarily for the personal, family or
8 household use of such person or a dependent of such person, provided
9 that nothing in this subsection shall be construed to allow a person
10 to exempt guns which are used mainly as an investment or
11 nonpersonal, family or household use;

12 15. Ten hogs, that are held primarily for the personal, family
13 or household use of such person or a dependent of such person;

14 16. Twenty head of sheep, that are held primarily for the
15 personal, family or household use of such person or a dependent of
16 such person;

17 17. All provisions and forage on hand, or growing for home
18 consumption, and for the use of exempt stock for one (1) year;

19 18. Seventy-five percent (75%) of all current wages or earnings
20 for personal or professional services earned during the last ninety
21 (90) days, except as provided in Title 12 of the Oklahoma Statutes
22 in garnishment proceedings for collection of child support;

23 19. Such person's right to receive alimony, support, separate
24 maintenance or child support payments to the extent reasonably

1 necessary for the support of such person and any dependent of such
2 person;

3 20. Subject to the Uniform Fraudulent Transfer Act, Section 112
4 et seq. of Title 24 of the Oklahoma Statutes, any interest in a
5 retirement plan or arrangement qualified for tax exemption or
6 deferment purposes under present or future Acts of Congress;
7 provided, any transfer or rollover contribution between retirement
8 plans or arrangements which avoids current federal income taxation
9 shall not be deemed a transfer which is fraudulent as to a creditor
10 under the Uniform Fraudulent Transfer Act. "Retirement plan or
11 arrangement qualified for tax exemption purposes" shall include
12 without limitation, trusts, custodial accounts, insurance, annuity
13 contracts and other properties and rights constituting a part
14 thereof. By way of example and not by limitation, retirement plans
15 or arrangements qualified for tax exemption or deferment purposes
16 permitted under present Acts of Congress include defined
17 contribution plans and defined benefit plans as defined under the
18 Internal Revenue Code ("IRC"), individual retirement accounts,
19 individual retirement annuities, simplified employee pension plans,
20 Keogh plans, IRC Section 403(a) annuity plans, IRC Section 403(b)
21 annuities, Roth individual retirement accounts created pursuant to
22 IRC Section 408A, educational individual retirement accounts created
23 pursuant to IRC Section 530 and eligible state deferred compensation
24 plans governed under IRC Section 457. This provision shall be in

1 addition to and not a limitation of any other provision of the
2 Oklahoma Statutes which grants an exemption from attachment or
3 execution and every other species of forced sale for the payment of
4 debts. This provision shall be effective for retirement plans and
5 arrangements in existence on, or created after April 16, 1987;

6 21. Such person's interest in a claim for personal bodily
7 injury, death or workers' compensation claim, for a net amount not
8 in excess of Fifty Thousand Dollars (\$50,000.00), but not including
9 any claim for exemplary or punitive damages;

10 22. Funds in an individual development account established
11 pursuant to the provisions of Section 251 et seq. of Title 56 of the
12 Oklahoma Statutes;

13 23. Any amount received pursuant to the federal earned income
14 tax credit; and

15 24. Any interest in an Oklahoma College Savings Plan account
16 established pursuant to the provisions of Section 3970.1 et seq. of
17 Title 70 of the Oklahoma Statutes.

18 B. No natural person residing in this state may exempt from the
19 property of the estate in any bankruptcy proceeding the property
20 specified in subsection (d) of Section 522 of the Bankruptcy Reform
21 Act of 1978, Public Law 95-598, 11 U.S.C.A. 101 et seq., except as
22 may otherwise be expressly permitted under this title or other
23 statutes of this state.

24

1 C. A judgment providing for the payment of an arrearage of
2 child support or pursuant to which a past due amount has accrued
3 shall not be subject to the exemptions from attachment as provided
4 for in this section.

5 SECTION 2. AMENDATORY 43 O.S. 2001, Section 135, is
6 amended to read as follows:

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

13 B. Past due amounts of child support shall become a lien by
14 operation of law upon the real and personal property of the person
15 ordered to make the payments at the time they become past due.

16 C. 1. A judgment or order providing for the payment of current
17 support or an arrearage of child support shall be a lien upon real
18 property owned by the person obligated to pay support or upon any
19 real property which may be acquired by the person prior to the
20 release of the lien. Notice of the lien on real property shall be
21 given by the filing of a statement of judgment pursuant to Section
22 706 of Title 12 of the Oklahoma Statutes with the county clerk of
23 the county where the property is located.

1 2. If child support services are being provided under the state
2 child support plan as provided under Section 237 of Title 56 of the
3 Oklahoma Statutes, the amount reflected in the official records of
4 the Centralized Support Registry provided for in Section 413 of this
5 title shall constitute the amount of the lien on the obligor's real
6 property, regardless of the amount reflected in the statement of
7 judgment.

8 3. The judgment or order shall not become a lien for any sums
9 prior to the date they severally become due and payable. A child
10 support judgment shall become dormant as a lien upon real property
11 five (5) years from the date the statement of judgment is filed of
12 record with the county clerk unless the judgment lien is extended in
13 accordance with subsection C of Section 759 of Title 12 of the
14 Oklahoma Statutes.

15 D. A judgment providing for the payment of an arrearage of
16 child support or pursuant to which a past due amount has accrued
17 shall become a lien upon benefits payable as a lump sum received
18 from a personal injury, wrongful death or workers' compensation
19 claim of the person ordered to pay the support and shall not be
20 subject to the exemptions from attachment provided for in the event
21 of a bankruptcy as provided for in Section 1 of Title 31 of the
22 Oklahoma Statutes or as otherwise provided by law. The lien shall
23 be effective upon the filing of an affidavit and a certified copy of
24 the judgment or order of lien with the Administrator of the Workers'

1 ~~Compensation Court~~ a court of competent jurisdiction, if a
2 proceeding for ~~compensation under the Workers' Compensation Act~~
3 personal injury, wrongful death or workers' compensation has been
4 initiated by or on behalf of the obligor. If a proceeding for
5 compensation has not been initiated, an affidavit ~~and a certified~~
6 ~~copy of the judgment or order~~ of lien shall be served by certified
7 mail upon the entity responsible for paying ~~workers' compensation~~
8 ~~benefits monies~~ to the person ordered to pay support. A court or
9 the entity responsible for satisfying the lien may request a
10 certified copy of the judgment or order be attached to the lien.

11 E. The provisions of this section shall be available to an
12 agency of another state responsible for implementing the child
13 support enforcement program set forth in Title IV-D, of the Social
14 Security Act seeking to enforce a judgment for child support.

15 F. The provisions of this section shall not authorize a forced
16 sale of any real property to enforce a lien which is otherwise
17 exempted by state law.

18 G. A lien shall be released upon the full payment of the amount
19 of the arrearage.

20 H. The person entitled to support or the Department of Human
21 Services on behalf of its clients and recipients is authorized to
22 enforce the liens created pursuant to this section and to execute
23 releases or partial releases of the liens.

24

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 237B of Title 56, unless there
3 is created a duplication in numbering, reads as follows:

4 A. For the purposes of this section, the word "claimant" shall
5 mean an individual who makes a personal injury, wrongful death, or
6 workers' compensation claim against an insured or under an insurance
7 policy.

8 B. Prior to making any recurring or nonrecurring payment of
9 Five Hundred Dollars (\$500.00) or more to a claimant under a
10 contract of insurance, every company authorized to issue insurance
11 policies pursuant to Title 36 of the Oklahoma Statutes shall
12 exchange information with the Department of Human Services, as set
13 forth in Section 237 of Title 56 of the Oklahoma Statutes, to
14 ascertain whether the claimant owes past due child support to the
15 state or to an individual to whom the Department is providing child
16 support services.

17 C. The Department shall develop and implement an insurance
18 industry data match reporting system. Such system shall be operated
19 by the Department and shall use data exchanges to compare claimant
20 information held by insurance companies with the Department's Child
21 Support Enforcement Division's database of child support obligors
22 who owe past due child support.

23 D. 1. To comply with the requirements of this section, an
24 insurance company shall either provide the Department with

1 information about the claimant or match information made available
2 by the Department.

3 2. If the company elects to provide the Department with
4 information about each claimant:

5 a. the company shall provide to the Department, not less
6 than ten (10) business days prior to making payment to
7 such claimant:

8 (1) the claimant's name,

9 (2) address,

10 (3) date of birth,

11 (4) social security number as appearing in the
12 company's files, and

13 (5) such other information appearing in the company's
14 files as the Department may require by rule, and

15 b. the company shall use a method and format prescribed
16 by the Department; provided, if the company is unable
17 to use a method and format prescribed, the company
18 shall cooperate with the Department to identify
19 another method or format, including submission of
20 written materials, and

21 c. the company shall be in compliance with the
22 requirements to provide information if the company
23 participates in an insurance industry database which
24 contains the necessary information and authorizes the

1 Department to obtain the information from the database
2 for the purpose of compliance with this section and
3 Section 135 of Title 43 of the Oklahoma Statutes.

4 3. If the company elects to match information made available by
5 the Department and such claimant owes past due child support, the
6 company shall notify the Department, not less than ten (10) business
7 days prior to making payment to such claimant, of:

- 8 a. the claimant's name,
- 9 b. address,
- 10 c. date of birth,
- 11 d. social security number as appearing in the company's
12 files, and
- 13 e. other information appearing in the company's files as
14 the Department may require by rule, using a method and
15 format prescribed by the Department.

16 E. 1. Upon receiving notice of a match as set forth in this
17 section, the Department's Child Support Enforcement Division shall
18 send the insurance company a child support lien pursuant to Section
19 135 of Title 43 of the Oklahoma Statutes or a notice of income
20 assignment pursuant to Section 1171.3 of Title 12 of the Oklahoma
21 Statutes.

22 2. The company shall withhold from the payment the amount of
23 past support as set forth in the child support lien or the amount of
24 current and past support as set forth in the notice of income

1 assignment and shall remit that amount to the Centralized Support
2 Registry as provided by Section 413 of Title 43 of the Oklahoma
3 Statutes.

4 3. The child support lien shall encumber the right of the
5 claimant to payment under the policy, and the company shall disburse
6 to the claimant only that portion of the payment, if any, remaining
7 after the child support lien has been satisfied.

8 F. The child support lien shall not encumber payments based on:

9 1. Services and expenses documented and related to the claim,
10 such as attorney fees or health care expenses;

11 2. Damage to or a loss of real property; or

12 3. Damage to or a loss of an automobile that would be exempt
13 from claims of general creditors pursuant to Section 1 of Title 31
14 of the Oklahoma Statutes.

15 G. The provisions of the Employee Retirement Income Security
16 Act limiting, for contracts of insurance, the amounts which may be
17 assigned or attached in order to satisfy child support obligations
18 shall apply to the provisions of this section.

19 H. 1. A company that knowingly fails to exchange information
20 regarding a claim to which this section applies shall be liable in a
21 civil action to the Department in the amount of Ten Thousand Dollars
22 (\$10,000.00).

23 2. In addition to the penalties in the previous paragraph, a
24 company that fails to exchange information or that fails or refuses

1 to surrender property subject to a child support lien or income
2 assignment to the Department shall be liable for payment of the
3 amount of the child support which should have been paid to the
4 Department.

5 I. The information obtained by the Department or an insurance
6 company pursuant to the provisions of this section shall be used
7 only to aid in collection of child support. Disclosure of the
8 information for any other purpose shall constitute a misdemeanor.
9 Any person convicted of violating this provision shall be subject to
10 a fine not to exceed One Thousand Dollars (\$1,000.00) or
11 imprisonment in the county jail for a term not to exceed one (1)
12 year, or both such fine and imprisonment.

13 J. 1. Upon the request of an insurance company, an individual
14 making a claim governed by this section shall provide to the
15 insurance company the individual's:

- 16 a. current address,
- 17 b. date of birth, and
- 18 c. social security number.

19 2. The company may inform the claimant that the request is
20 being made in accordance with this section for the purpose of
21 assisting the Department in enforcing child support liens arising
22 pursuant to Section 135 of Title 43 of the Oklahoma Statutes and
23 income assignments pursuant to Section 115 of Title 43 of the
24 Oklahoma Statutes.

1 3. Any individual who refuses to provide the information
2 required by this section shall not receive payment on the claim, and
3 the company that declines payment on this basis shall be exempt from
4 suit and immune from liability under this section or any other
5 section or in any common law action in law or equity.

6 K. The Department is authorized to enter into any contracts or
7 cooperative agreements necessary to carry out the provisions of this
8 section.

9 L. An insurance company shall be immune from civil liability to
10 an individual or agency for acting in accordance with this section.

11 M. The Department shall promulgate rules to implement the
12 provisions of this section.

13 SECTION 4. This act shall become effective November 1, 2007."

14 Passed the House of Representatives the 24th day of April, 2007.

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Presiding Officer of the House of
Representatives

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19 Passed the Senate the ____ day of _____, 2007.

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Presiding Officer of the Senate

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