

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 1073

By: Crain

4
5
6 AS INTRODUCED

7 An Act relating to civil procedure; amending 12 O.S.
8 2001, Sections 139, 706, 842, as last amended by
9 Section 2, Chapter 450, O.S.L. 2004, 936, as amended
10 by Section 5, Chapter 468, O.S.L. 2002, 1173, 1173.4,
11 as amended by Section 5, Chapter 450, O.S.L. 2004,
12 1183, 1190, as amended by Section 1, Chapter 26,
13 O.S.L. 2002, 1554 and 1764, as last amended by
14 Section 3, Chapter 447, O.S.L. 2004 (12 O.S. Supp.
15 2008, Sections 842, 936, 1173.4, 1190 and 1764),
16 which relate to venue, judgment, debtor's appearance,
17 attorney fees, garnishment, costs, powers of receiver
18 and fees, modifying venue for certain actions;
19 modifying requirement for release of certain lien;
20 requiring certain order under specified
21 circumstances; providing for service and payment of
22 costs; modifying venue; increasing certain fee;
23 allowing award of attorney fee under certain
24 circumstances; authorizing suspension or modification
of certain garnishment; requiring mailing of certain
agreement; modifying certain time period; modifying
requirements for attachment of certain lien;
modifying time period for certain garnishment;
deleting certain discovery requirement; increasing
certain fee; authorizing sale of certain property;
adding fee for certain claim; amending 28 O.S. 2001,
Section 152, as last amended by Section 2, Chapter
247, O.S.L. 2007 (28 O.S. Supp. 2008, Section 152),
which relates to flat fee schedule; adding fee for
certain claims; defining term; stating exceptions;
requiring certain designation on specified document;
and providing an effective date.

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

2 SECTION 1. AMENDATORY 12 O.S. 2001, Section 139, is
3 amended to read as follows:

4 Section 139. Every other action must be brought in the county
5 in which the defendant or some one of the defendants resides or
6 resided at the time the claim arose, or may be summoned; except
7 claims against makers of notes, claims, or other indebtedness which
8 have been assigned, sold or transferred by or from the original
9 payee or obligee, which claims against such original maker of such
10 notes, claims or indebtedness can only be brought in the county in
11 which the said maker of such note, claim or indebtedness or some one
12 of the original makers of such note, claim or indebtedness resides
13 or in the county in which the claim arose. Provided, however, this
14 section shall not in any way change or limit Section ~~4671 of the~~
15 ~~Revised Laws of Oklahoma, 1910~~ 131 of this title.

16 SECTION 2. AMENDATORY 12 O.S. 2001, Section 706, is
17 amended to read as follows:

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

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

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

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

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

20 1. It shall be the duty of the county clerk, immediately after
21 the filing of the Statement of Judgment, to make in the judgment
22 index a separate entry in alphabetical order of the name of each
23 judgment debtor named therein, which entry shall also contain the
24 name(s) of the judgment creditor(s), the name of the court which

1 granted the judgment, the number and style of the case in which the
2 judgment was filed, the amount of the judgment, including interest,
3 costs and attorney's fees if shown on the Statement of Judgment, the
4 date of the filing of the judgment with the court clerk of the court
5 which granted it, and the date of filing of the Statement of
6 Judgment with the county clerk.

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

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

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

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

1 a. A Release of Judgment Lien shall either recite the
2 name of the court which granted the judgment, the
3 number and style of the case, the name of each
4 judgment debtor with respect to whom the lien is being
5 released, the name of each judgment creditor in favor
6 of whom the lien was created, or otherwise adequately
7 identify the judgment lien being released and the
8 judgment debtor against whom the lien is indexed. The
9 Administrative Director of the Courts shall prescribe
10 a form of Release of Judgment which may be used at the
11 option of the judgment creditor.

12 b. If the release is only partial, it shall also contain
13 a description of the lands then being released from
14 the judgment lien or identify the particular judgment
15 debtors, if less than all, with respect to whom the
16 lien is then being released, or both, as the case may
17 be.

18 c. A Release of Judgment Lien may also be filed with the
19 court clerk of the court which granted the judgment
20 but filing with the court clerk does not release any
21 judgment lien created pursuant to this section.

22 2. The lien of any judgment which has been satisfied ~~by payment~~
23 in full, vacated or become dormant or otherwise ~~discharged~~
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1 unenforceable and which has not been released by the judgment
2 creditor shall be released by the court upon written motion.

3 a. The motion shall be accompanied by an affidavit
4 stating the grounds for the motion, and shall contain
5 or be accompanied by a notice to the judgment creditor
6 that, if the judgment creditor does not file with the
7 court a response or objection to the motion within
8 fifteen (15) days after the mailing of a copy of the
9 motion to the judgment creditor, the court will order
10 the judgment lien released.

11 b. A copy of the motion shall be mailed by certified mail
12 by the party seeking release of the lien to the
13 judgment creditor at the last-known address of the
14 judgment creditor, and to the attorney of record of
15 the judgment creditor, if any. There shall be
16 attached to the filed motion, and to each copy of the
17 motion to be mailed, a Certificate of Mailing showing
18 to whom copies of the motion were mailed, the
19 addresses to which they were mailed, and the date of
20 mailing.

21 c. If the judgment creditor does not file a response or
22 objection to the motion within fifteen (15) days after
23 the mailing of a copy of the motion, the court shall
24 order the judgment lien released.

1 d. When a judgment lien is ordered released by the court,
2 the court shall cause a Release of Judgment Lien, in
3 the form provided by the Administrative Director of
4 the Courts, to be prepared. Instructions shall be
5 printed on such form advising the judgment debtor to
6 file the Release in the office of the county clerk of
7 the county in which the real estate is situated in
8 order to obtain the release of the lien of the
9 judgment upon the real estate of the judgment debtor
10 in such county.

11 e. The party filing the motion for release shall pay all
12 costs of the proceeding and any recording fees.

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

19 G. Acceptance by County Clerk. The county clerk shall accept
20 for filing and file any Statement of Judgment or Release of Judgment
21 Lien without requiring any formalities of execution other than those
22 provided in this section.

1 SECTION 3. AMENDATORY 12 O.S. 2001, Section 842, as last
2 amended by Section 2, Chapter 450, O.S.L. 2004 (12 O.S. Supp. 2008,
3 Section 842), is amended to read as follows:

4 Section 842. A. At any time after a final judgment, order, or
5 decree is filed, on application of the judgment creditor, a judge of
6 the court in which the final judgment, order, or decree was rendered
7 shall ~~order~~:

8 1. Order the judgment debtor to appear before the judge, or a
9 referee appointed by the judge, at a time and place specified in the
10 order, to answer concerning the judgment debtor's property. The
11 judge may, by order, enjoin the judgment debtor from alienating,
12 concealing, or encumbering any of the judgment debtor's nonexempt
13 property pending the hearing and further order of the court. Upon
14 the judgment debtor's disclosure of any nonexempt property,
15 proceedings as provided by law may be had for the application of the
16 property to the satisfaction of the judgment. If the judgment
17 debtor is personally served with an order to appear pursuant to this
18 section, the judge issuing the order may authorize the issuance of
19 either a contempt citation or a bench warrant for the judgment
20 debtor's failure to comply with the order. If the judgment debtor
21 is served by other than personal service, the judge may authorize
22 the issuance of a contempt citation for the judgment debtor's
23 failure to comply with the order; and

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1 2. Issue an order authorizing the Oklahoma Employment Security
2 Commission to release to the judgment creditor any employment
3 information maintained by the Commission concerning the judgment
4 debtor if such authority was not granted in the judgment. Service
5 of the application on the judgment debtor by the judgment creditor
6 shall be in accordance with Section 2005 of this title. The
7 judgment creditor shall be entitled to any costs paid to the
8 Commission pursuant to Section 4-508 of Title 40 of the Oklahoma
9 Statutes.

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

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

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

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

7 C. Failure by any person, without good cause, to obey a
8 subpoena issued and served pursuant to this section by personal
9 service may be deemed a contempt of the court from which the
10 subpoena issued.

11 D. In addition to sums otherwise due under a final judgment,
12 order, or decree if an order, subpoena, citation for failure to obey
13 an order to appear or discovery request is served upon the judgment
14 debtor or any person under this section, the judgment creditor shall
15 be entitled to costs of service and, if represented by an attorney,
16 to an attorney fee of ~~Seventy five Dollars (\$75.00)~~ One Hundred
17 Dollars (\$100.00) for each order or subpoena to appear, citation for
18 failure to obey an order or subpoena to appear, and discovery
19 request; provided, attorney fees awarded pursuant to this subsection
20 relating to a judgment, order, or decree shall not exceed ~~One~~
21 ~~Hundred Fifty Dollars (\$150.00)~~ Three Hundred Dollars (\$300.00) in
22 any calendar year.

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1 SECTION 4. AMENDATORY 12 O.S. 2001, Section 936, as
2 amended by Section 5, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2008,
3 Section 936), is amended to read as follows:

4 Section 936. A. In any civil action to recover for labor or
5 services rendered, or on an open account, a statement of account,
6 account stated, note, bill, negotiable instrument, or contract
7 relating to the purchase or sale of goods, wares, or merchandise,
8 unless otherwise provided by law or the contract which is the
9 subject of the action, the prevailing party shall be allowed a
10 reasonable attorney fee to be set by the court, to be taxed and
11 collected as costs.

12 B. In any civil action to recover unpaid fees, fines, costs,
13 expenses or any other debt owed to this state or its agencies, as
14 defined pursuant to Section 152 of Title 51 of the Oklahoma
15 Statutes, unless otherwise provided by law, the prevailing party
16 shall be allowed a reasonable attorney fee to be set by the court,
17 to be taxed and collected as costs.

18 SECTION 5. AMENDATORY 12 O.S. 2001, Section 1173, is
19 amended to read as follows:

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

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

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

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

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

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

20 1. Whether the garnishee was the employer of or indebted or
21 under any liability to the defendant named in the notice in any
22 manner or upon any account for earnings or wages, specifying, as
23 applicable, the beginning and ending dates of the pay period
24 existing at the time of the service of the affidavit and summons,

1 the total amounts earned in the pay period, and all of the facts and
2 circumstances necessary to a complete understanding of the
3 indebtedness or liability. When the garnishee shall be in doubt
4 respecting the liability or indebtedness, the garnishee may set
5 forth all of the facts and circumstances concerning the same, and
6 submit the question to the court;

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

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

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

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

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

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

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

13 I. 1. When a postjudgment noncontinuing earnings garnishment
14 under Section 1173 of this title or a continuing earnings
15 garnishment under Section 1173.4 of this title is issued against a
16 defendant already subject to an income assignment for child support,
17 the garnishee shall determine the maximum percentage of the
18 defendant's disposable earnings according to the provisions of
19 Section 1171.2 of this title and then deduct from that percentage
20 the actual percentage of the defendant's disposable earnings
21 actually withheld under the income assignment. The resulting
22 percentage shall be the amount to be withheld by the garnishee, not
23 to exceed twenty-five percent (25%).

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

7 J. A noncontinuing earnings garnishment may be suspended or
8 modified by the judgment creditor upon agreement with the judgment
9 debtor, which agreement shall be in writing and filed by the
10 judgment creditor with the clerk of the court in which the judgment
11 was entered. A copy of such agreement shall be mailed by first
12 class mail to the garnishee, postage prepaid by judgment creditor.

13 SECTION 6. AMENDATORY 12 O.S. 2001, Section 1173.4, as
14 amended by Section 5, Chapter 450, O.S.L. 2004 (12 O.S. Supp. 2008,
15 Section 1173.4), is amended to read as follows:

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

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

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

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

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

11 F. Within seven (7) days after the end of each pay period, or,
12 if the judgment debtor does not have regular pay periods or is not
13 paid by the garnishee within thirty (30) days from the date of the
14 garnishment summons, and after any payment by the garnishee to the
15 judgment debtor, the garnishee shall file an answer with the court
16 clerk, and pay the amount withheld to the judgment creditor's
17 attorney or to the judgment creditor, if there is no attorney,
18 together with a copy of the answer which shall state:

19 1. Whether the garnishee was the employer of the defendant
20 named in the notice, was indebted to the defendant, or was under any
21 liability to the defendant in any manner or upon any account for
22 earnings, specifying the beginning and ending dates of the pay
23 period, if applicable, existing at the time of the service of the
24 affidavit and summons, the total amounts earned in the entire pay

1 period, and all of the facts and circumstances necessary to a
2 complete understanding of any indebtedness or liability. When the
3 garnishee shall be in doubt respecting the liability or
4 indebtedness, the garnishee may set forth all of the facts and
5 circumstances concerning the same, and submit the question to the
6 court;

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

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

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

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

22 G. The garnishment summons served on the garnishee under this
23 section is a lien on the defendant's property due at the time of
24 service or the effective date of the summons, to the extent the

1 property is not exempt from garnishment. This lien attaches to
2 subsequent nonexempt earnings until one of the following occurs:

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

5 2. ~~The employment relationship is terminated;~~

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

8 4. 2. The summons is dismissed; or

9 5. 3. One hundred eighty (180) days from the effective date of
10 ~~service of the affidavit and summons~~ have elapsed; provided, an
11 affidavit and summons shall continue in effect and shall apply to a
12 pay period beginning before the end of the one_hundred_eighty-day
13 period even if the conclusion extends beyond the end of the period.

14 H. 1. A garnishment lien under this section has priority over
15 any subsequent garnishment lien or garnishment summons served on the
16 garnishee during the period it is in effect, regardless of whether
17 the amounts withheld by the garnishee are reduced by the court or by
18 agreement of the parties.

19 2. a. When a garnishment summons is served under this
20 section on a garnishee while a previous garnishment
21 lien is still in effect, the garnishee shall answer
22 the subsequent garnishment lien or garnishment summons
23 by stating that the garnishee is presently holding
24 defendant's property under a previous garnishment lien

1 or garnishment summons, and by giving the date when
2 all previous garnishment liens or garnishment summons
3 are expected to end.

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

9 I. 1. When a postjudgment wage garnishment under Section 1173
10 of this title or a continuing earnings garnishment under this
11 section is issued against a defendant already subject to an income
12 assignment for child support, the garnishee shall determine the
13 maximum percentage of the defendant's disposable earnings according
14 to the provisions of Section 1171.2 of this title and then deduct
15 from that percentage the actual percentage of the defendant's
16 disposable earnings actually withheld under the income assignment.
17 The resulting percentage shall be the amount to be withheld by the
18 garnishee, not to exceed twenty-five percent (25%).

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

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

9 K. Any garnishment issued against a debtor already subject to a
10 continuing or noncontinuing earnings garnishment shall take effect
11 immediately upon the conclusion of the prior garnishment, and shall
12 be effective for its full one-hundred-eighty-day period of time or
13 as otherwise provided in this section as specified in subsection G
14 of this section.

15 SECTION 7. AMENDATORY 12 O.S. 2001, Section 1183, is
16 amended to read as follows:

17 Section 1183. The garnishee may be examined by the judgment
18 creditor in any manner prescribed by the Oklahoma Discovery Code.
19 Discovery may commence at any time after the service of the
20 garnishee summons. If the garnishee is a corporation, any principal
21 officer thereof may be so examined. Within forty-five (45) days
22 after the filing of the answer affidavit by the garnishee, the
23 judgment creditor may commence discovery concerning any matter
24 contained in the answer or germane to any liability on the

1 garnishee's part to the principal defendant. ~~Attached to any~~
2 ~~discovery request or notice of deposition shall be a statement that,~~
3 ~~upon failure to answer or appear, a judgment may be taken against~~
4 ~~the garnishee by default for the amount of the judgment and costs~~
5 ~~which the judgment creditor shall recover or has recovered against~~
6 ~~the defendant in the principal action, together with costs of the~~
7 ~~garnishment, and that the garnishee may also be proceeded against~~
8 ~~for contempt.~~ A copy of the discovery request or notice of
9 deposition and such statement shall be served upon the garnishee or
10 the garnishee's attorney of record in the manner provided for
11 service of summons. The garnishee within twenty (20) days of the
12 date of service of a discovery request shall deliver by mail a copy
13 to the judgment creditor or the judgment creditor's attorney of
14 record, full and true answers to all discovery requests, verified by
15 affidavit, in the manner prescribed by the Oklahoma Discovery Code.

16 SECTION 8. AMENDATORY 12 O.S. 2001, Section 1190, as
17 amended by Section 1, Chapter 26, O.S.L. 2002 (12 O.S. Supp. 2008,
18 Section 1190), is amended to read as follows:

19 Section 1190. A. A garnishee may deduct a fee of Ten Dollars
20 (\$10.00) from the funds of the defendant in the garnishee's
21 possession as reimbursement for costs incurred in answering. If the
22 garnishee is not indebted to the defendant and the garnishee's
23 answer evidencing that is filed and mailed or delivered to the
24 judgment creditor or to the judgment creditor's attorney of record,

1 the garnishee may assess the judgment creditor a fee of Ten Dollars
2 (\$10.00) as reimbursement for such costs.

3 B. 1. In case of the trial of any issue between the judgment
4 creditor and any garnishee, costs shall be awarded to the judgment
5 creditor and against the garnishee, in addition to the garnishee's
6 liability, if the judgment creditor recovered more than the
7 garnishee admitted by the garnishee's answer; and if the judgment
8 creditor does not, the garnishee shall recover costs from the
9 judgment creditor. The costs shall include a reasonable attorney's
10 fee to be taxed in favor of the prevailing party.

11 2. In the case of the trial to determine the amount to be
12 recovered for due and owing child support, where any liability on
13 the part of the garnishee is disclosed, costs shall be awarded to
14 the judgment creditor and against the defendant, including a
15 reasonable attorney's fee.

16 C. In all other cases under this article not expressly provided
17 for, the court may, in its discretion, award costs in favor of or
18 against any party.

19 D. In addition to sums otherwise due pursuant to a judgment, a
20 judgment creditor, if represented by an attorney, shall be entitled
21 to an attorney's fee of Fifty Dollars (\$50.00) for prosecuting a
22 garnishment pursuant to subparagraphs b, c, and d of paragraph 2 of
23 subsection B of Section 1171 of this title, and an attorney's fee of
24 One Hundred Dollars (\$100.00) for prosecuting a garnishment pursuant

1 to subparagraph e of paragraph 2 of subsection B of Section 1171 of
2 this title, not to exceed a total of ~~One Hundred Fifty Dollars~~
3 ~~(\$150.00)~~ Two Hundred Dollars (\$200.00) in any ~~twelve-month period~~
4 calendar year.

5 SECTION 9. AMENDATORY 12 O.S. 2001, Section 1554, is
6 amended to read as follows:

7 Section 1554. A. The receiver has, under the control of the
8 court, power to bring and defend actions in his own name, as
9 receiver; to take and keep possession of the property, to receive
10 rents, to collect debts, to compound for and compromise the same, to
11 make transfers, and generally to do such acts respecting the
12 property as the courts may authorize.

13 B. Upon the motion of the receiver or any party and upon the
14 court's authorization, a receiver may sell free and clear of any
15 interest in property of the receivership estate of an entity or
16 person other than the receivership estate if such entity or person
17 may be compelled, in a legal or equitable proceeding, to accept a
18 money satisfaction of such interest, with any such competing
19 interest attaching to the proceeds of such sale, the effectiveness
20 and priorities of same to be determined by the court. The reversal
21 or modification on appeal of an authorization under this section of
22 a sale of property does not affect the validity of a sale under such
23 authorization to an entity or person that purchased such property in
24 good faith, whether or not such entity or person knew of the

1 pendency of the appeal, unless such authorization and such sale were
2 stayed pending appeal.

3 SECTION 10. AMENDATORY 12 O.S. 2001, Section 1764, as
4 last amended by Section 3, Chapter 447, O.S.L. 2004 (12 O.S. Supp.
5 2008, Section 1764), is amended to read as follows:

6 Section 1764. A fee of Forty-five Dollars (\$45.00) shall be
7 charged and collected for the filing of the affidavit for the
8 commencement of any action or counterclaim for an amount of One
9 Thousand Five Hundred Dollars (\$1,500.00) or less. Any action in
10 excess of One Thousand Five Hundred Dollars (\$1,500.00) shall be
11 subject to the filing fees provided in Title 28 of the Oklahoma
12 Statutes for the same kind of action as filed in district court.
13 For the filing of any counterclaim or setoff, fees shall be charged
14 and collected pursuant to Section 152.1 of Title 28 of the Oklahoma
15 Statutes. Except as otherwise provided in Section 1772 of this
16 title, no other fee or charge shall be collected by any officer for
17 any service rendered pursuant to the provisions of the Small Claims
18 Procedure Act, or for the taking of affidavits for use in connection
19 with any action tried pursuant to the provisions of the Small Claims
20 Procedure Act. If the affidavit and order are served by the sheriff
21 or a licensed private process server, the court clerk shall collect
22 the usual fee for the sheriff, which shall be taxed as costs in the
23 case. The fee paid to a licensed private process server, as
24 approved by the court, shall be taxed as additional costs in the

1 case. After judgment, the court clerk shall issue such process and
2 shall be entitled to collect only such fees and charges as are
3 allowed by law for like services in other actions. All fees
4 collected as authorized by this section and Section 1772 of this
5 title shall be deposited with other fees that are collected by the
6 district court. Any statute providing for an award of attorneys
7 fees shall be applicable to the small claims division if the
8 attorney makes an appearance in the case, whether before or after
9 judgment or on hearing for disclosure of assets.

10 SECTION 11. AMENDATORY 28 O.S. 2001, Section 152, as
11 last amended by Section 2, Chapter 247, O.S.L. 2007 (28 O.S. Supp.
12 2008, Section 152), is amended to read as follows:

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

- 18 1. Actions for divorce, alimony without
19 divorce, separate maintenance, custody or
20 support..... \$140.00
- 21 2. Any ancillary proceeding to modify or
22 vacate a divorce decree providing for
23 custody or support.....\$40.00
- 24 3. Probate and guardianship.....\$132.00

- 1 4. Annual guardianship report.....\$30.00
- 2 5. Any proceeding for sale or lease of real or
- 3 personal property or mineral interest in
- 4 probate or guardianship.....\$40.00
- 5 6. Any proceeding to revoke the probate of a
- 6 will.....\$40.00
- 7 7. Judicial determination of death.....\$55.00
- 8 8. Adoption.....\$102.00
- 9 9. Civil actions and counterclaims for an
- 10 amount of Ten Thousand Dollars (\$10,000.00)
- 11 or less and condemnation.....\$147.00
- 12 10. Civil actions and counterclaims for an
- 13 amount of Ten Thousand One Dollars
- 14 (\$10,001.00) or more\$160.00
- 15 11. Garnishment.....\$20.00
- 16 12. Continuing wage garnishment.....\$60.00
- 17 13. Any other proceeding after judgment.....\$30.00
- 18 14. All others, including but not limited to
- 19 actions for forcible entry and detainer,
- 20 judgments from all other courts, including
- 21 the Workers' Compensation Court.....\$82.00
- 22 15. Notice of renewal of judgment.....\$20.00

23 B. In addition to the amounts collected pursuant to paragraphs
 24 1, 3, 7, 8, 9, 10 and 14 of subsection A of this section, the sum of

1 Six Dollars (\$6.00) shall be assessed and credited to the Law
2 Library Fund.

3 C. In addition to the amounts collected pursuant to subsections
4 A and B of this section, the sum of Twenty-five Dollars (\$25.00)
5 shall be assessed and credited to the Oklahoma Court Information
6 System Revolving Fund created pursuant to Section 1315 of Title 20
7 of the Oklahoma Statutes.

8 D. Of the amounts collected pursuant to paragraph 8 of shall be
9 deposited to the credit of the Voluntary Registry and Confidential
10 Intermediary program and the Mutual Consent Voluntary Registry
11 established pursuant to the Oklahoma Adoption Code.

12 E. Of the amounts collected pursuant to subsection A of this
13 section, the sum of Ten Dollars (\$10.00) shall be deposited to the
14 credit of the Child Abuse Multidisciplinary Account.

15 F. In addition to the amounts collected pursuant to subsections
16 A and B of this section, the sum of Three Dollars (\$3.00) shall be
17 assessed and credited to the Office of the Attorney General Victim
18 Services Unit.

19 G. In any case in which a litigant claims to have a just cause
20 of action and that, by reason of poverty, the litigant is unable to
21 pay the fees and costs provided for in this section and is
22 financially unable to employ counsel, upon the filing of an
23 affidavit in forma pauperis executed before any officer authorized
24 by law to administer oaths to that effect and upon satisfactory

1 showing to the court that the litigant has no means and is,
2 therefore, unable to pay the applicable fees and costs and to employ
3 counsel, no fees or costs shall be required. The opposing party or
4 parties may file with the court clerk of the court having
5 jurisdiction of the cause an affidavit similarly executed
6 contradicting the allegation of poverty. In all such cases, the
7 court shall promptly set for hearing the determination of
8 eligibility to litigate without payment of fees or costs. Until a
9 final order is entered determining that the affiant is ineligible,
10 the clerk shall permit the affiant to litigate without payment of
11 fees or costs. Any litigant executing a false affidavit or counter
12 affidavit pursuant to the provisions of this section shall be guilty
13 of perjury.

14 H. Payments to the court clerk for fees and costs assessed
15 pursuant to this section may be made by a nationally recognized
16 credit or debit card or other electronic payment method as provided
17 in paragraph 1 of subsection B of Section 151 of this title.

18 I. As used in this section, a "counterclaim" means a request of
19 any form of affirmative relief or injunction claimed against any
20 party to the litigation. This shall not apply to domestic or family
21 law cases, or to a prayer for costs or attorney fees. A
22 counterclaim must be clearly designated as a counterclaim on the
23 title of the first page of the pleading or such claim will be
24 treated as merely an affirmative defense. Any party may move to

1 dismiss a counterclaim filed without payment of the filing fee as
2 required by subsection A of this section.

3 SECTION 12. This act shall become effective November 1, 2009.

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