

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 HOUSE BILL 2468

By: Turner

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6 AS INTRODUCED

7 An Act relating to garnishment; amending 12 O.S.
8 2011, Sections 1173 and 1173.4, which relate to
9 earnings garnishment; prohibiting deferred deposit
10 lender from garnishing earnings; defining term; and
11 providing an effective date.

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

13 SECTION 1. AMENDATORY 12 O.S. 2011, Section 1173, is
14 amended to read as follows:

15 Section 1173. A. Any judgment creditor, other than a deferred
16 deposit lender, may obtain a noncontinuing lien on earnings. For
17 the purposes of this section, "earnings" means any form of payment
18 to an individual including, but not limited to, salary, commission,
19 or other compensation, but does not include reimbursements for
20 travel expenses for state employees. For the purposes of this
21 subsection, "deferred deposit lender" means any person licensed
22 under the Deferred Deposit Lending Act in Sections 3101 through 3119
23 of Title 59 of the Oklahoma Statutes.
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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~~ Director 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~~ Director 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 this section or a continuing earnings garnishment under
15 Section 1173.4 of this title is issued against a defendant already
16 subject to an income assignment for child support, the garnishee
17 shall determine the maximum percentage of the defendant's disposable
18 earnings according to the provisions of Section 1171.2 of this title
19 and then deduct from that percentage the actual percentage of the
20 defendant's disposable earnings actually withheld under the income
21 assignment. The resulting percentage shall be the amount to be
22 withheld by the garnishee, not to exceed twenty-five percent (25%).

23 2. For any involuntary legal or equitable procedures through
24 which the earnings of any individual are required to be withheld for

1 the payment of any debt which has statutory priority over this
2 section, the amount withheld pursuant to a garnishment under this
3 section shall be reduced by the actual sums withheld pursuant to
4 such other involuntary process.

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

11 SECTION 2. AMENDATORY 12 O.S. 2011, Section 1173.4, is
12 amended to read as follows:

13 Section 1173.4 A. Any judgment creditor, other than a deferred
14 deposit lender, may obtain a continuing lien on earnings. For the
15 purposes of this section, "earnings" means any form of payment to an
16 individual including, but not limited to, salary, wages, commission,
17 or other compensation, but does not include reimbursements for
18 travel expenses for state employees. For the purposes of this
19 subsection, "deferred deposit lender" means any person licensed
20 under the Deferred Deposit Lending Act in Sections 3101 through 3119
21 of Title 59 of the Oklahoma Statutes.

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 judgment against the defendant is vacated, modified, or
4 satisfied in full;

5 2. The summons is dismissed; or

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

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

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

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

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

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

22 J. A continuing earnings garnishment may be suspended or
23 modified for a specific period of time within the effective period
24 of the garnishment by the judgment creditor upon agreement with the

1 judgment debtor, which agreement shall be in writing and filed by
2 the judgment creditor with the clerk of the court in which the
3 judgment was entered, and a copy of which shall be mailed by first-
4 class mail, postage prepaid by the judgment creditor to the
5 garnishee.

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

11 SECTION 3. This act shall become effective November 1, 2014.

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