

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE BILL 3104

By: Caldwell

AS INTRODUCED

An Act relating to civil procedure; amending 12 O.S. 2011, Sections 1171 and 1190, which relate to garnishment; providing for good faith belief; making language gender neutral; requiring judgment creditor to pay garnishee directly for costs in answering; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2011, Section 1171, is amended to read as follows:

Section 1171. A. Any creditor shall be entitled to proceed by garnishment in any court having jurisdiction against any person who the creditor, in good faith, believes shall be indebted to the creditor's debtor or has ~~any property in his possession or under his control~~ of any property belonging to such creditor's debtor, in the cases, upon the conditions, and in the manner described by law.

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

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

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

5 a. Income assignment for child support pursuant to the
6 provisions of Section 1171.2 of this title~~†~~1

7 b. Noncontinuing earnings garnishment pursuant to Section
8 1173 of this title~~†~~1

9 c. Garnishment for collection of child support pursuant
10 to Section 1173.2 of this title~~†~~1

11 d. General garnishment pursuant to Section 1173.3 of this
12 title~~†~~1 and

13 e. Continuing earnings garnishment pursuant to Section
14 1173.4 of this title.

15 SECTION 2. AMENDATORY 12 O.S. 2011, Section 1190, is
16 amended to read as follows:

17 Section 1190. A. ~~A garnishee may deduct judgment creditor~~
18 ~~shall remit a fee of Ten Dollars (\$10.00) from the funds of the~~
19 ~~defendant in the garnishee's possession~~ Twenty-five Dollars (\$25.00)
20 by cashier's check payable to the garnishee as reimbursement for
21 costs incurred in answering. If the garnishee is not indebted to
22 the defendant and the garnishee's answer evidencing that is filed
23 and mailed or delivered to the judgment creditor or to the judgment
24 creditor's attorney of record, the garnishee may assess the judgment

1 ~~creditor a fee of Ten Dollars (\$10.00) as reimbursement for such~~
2 ~~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
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 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 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 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 Two Hundred Dollars (\$200.00)
3 in any calendar year.

4 SECTION 3. This act shall become effective November 1, 2016.

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