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312 Rosa L. Parks Avenue, 8th Floor Tennessee Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Department of Human Services
Division:	Child Support Services
Contact Person:	Barbara Broersma
Address:	Office of General Counsel Citizens Plaza Building, 10th Floor 400 Deaderick Street Nashville, Tennessee 37243-1403
Zip:	37243-1403
Phone:	615-313-4731
Email:	barbara.broersma@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only **ONE** Rule Number/RuleTitle per row)

Chapter Number	**Chapter Title**
1240-02-05	Liens for Child Support
Rule Number	**Rule Title**
1240-02-05-.02	Definitions
1240-02-05-.13	Due Process Procedures
1240-02-05-.16	Child Support Lien Notice and Instructions

Chapter Number	**Chapter Title**
Rule Number	**Rule Title**

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1240-02-05
Liens for Child Support

Amendments

Rule 1240-02-05-.02 Definitions, is amended by deleting the references "T.C.A. § 36-5-101(a)(5)" and "Tennessee Code Annotated, Section 36-5-101(a)(5)" in paragraph (2) and subparagraph (2)(a) respectively, and substituting instead the reference "T.C.A. § 36-5-101(f)(1)"; and by deleting the reference to subsection 36-5-101(g) in paragraph (2) and substituting instead the reference to subsection 36-5-501(g) and by adding the phrase "thus the date payment is made is affected by the operation of the income assignment" so that, as amended, paragraph (2) shall read as follows:

(2) "Arrears" or "Arrearage" means any occasion on which the full amount of support ordered for or on behalf of a minor child, or for a spouse or former spouse of the obligor with whom the child is living to the extent the spousal support would be included for the purposes of 42 U.S.C. 654A(4), is not paid by the due date which causes the support to become "in arrears" as defined in T.C.A. § 36-5-101(f)(1), unless an income assignment is in effect and the payer of income is paying pursuant to subsection § 36-5-501(g), thus the date payment is made is affected by the operation of the income assignment.

(a) T.C.A. § 36-5-101(f)(1) defines "in arrears" as the circumstances existing when the full amount of child support is not paid by the date upon which the ordered support is due. The unpaid amount at that time is "in arrears, and shall become a judgment for the unpaid amounts.

(b) Arrears or arrearage may also be known as and referred to in these rules as "overdue" support or "past-due" support.

(c) Arrears shall include the totals of all amounts of support that are not paid and that remain unpaid by the obligor at the time a lien is perfected, or which become due as arrears subsequent to the perfection of the lien.

Rule 1240-02-05-.02 Definitions, is further amended by deleting the references "§ 36-5-101(a)(5)" in paragraph (13) and substituting instead the reference "T.C.A. § 36-5-101(f)(1)"; by deleting the reference to subsection "36-5-101(g)" and substituting instead the reference to subsection "36-5-501(g)"; and by deleting the references "1240-2-5-.02(b)" and substituting instead the reference "1240-02-05-.02(2)(b), and by adding the phrase "thus the date payment is made is affected by the operation of the income assignment" so that, as amended, paragraph (13) shall read as follows:

(13) (a) "Overdue support" means for purposes of this Chapter, any occasion on which the full amount of ordered support for or on behalf of a minor child, or for a spouse or former spouse of the obligor with whom the child is living to the extent spousal support would be included for the purposes of 42 U.S.C. § 654(4), is not paid by the due date for arrears as defined in T.C.A. § 36-5-101(f)(1) unless an income assignment is in effect and the payer of income is paying pursuant to § 36-5-501(g), thus the date payment is made is affected by the operation of the income assignment.

(b) "Overdue support" shall include all amounts of support that are in arrears as defined in T.C.A. § 36-5-101(f)(1) and 1240-02-05-.02(2)(b) and that remain unpaid by the obligor at the time the lien is perfected or which become due as arrears subsequent to the perfection of the lien.

(c) The term "overdue support" may be used interchangeably with "arrears" or "past due support as described in 1240-02-05-.02(2)(b).

Authority: T.C.A. §§ 4-5-202; 36-5-901 et seq.; 36-5-912; 36-5-1001; 71-1-132; 29 U.S.C. §1056(d); 42 U.S.C. §§ 654a (a), (g) and (h); 659(i), and 666(c)(1)(G) and (c)(3).

Rule 1240-02-05-.13 Due Process Procedures, is amended by deleting the language in part (3)(a)1 and substituting instead new language so that, as amended, part (3)(a)1 shall read as follows:

1. Whether there is a mistake as to the identity of the persons or entities to whom the administrative action has been directed;

Authority: T.C.A. §§ 4-5-202; 36-5-901 et seq.; 36-5-907, and 36-5-912.

Rule 1240-02-05-.16 Child Support Lien Notice and Instructions, is amended by deleting the language in paragraph (2) and substituting instead new language so that, as amended, paragraph (2) shall read as follows:

(2) Form.

The form, number OMB-0970-0153, and instructions are available in Adobe PDF at: http://www.acf.hhs.gov/programs/cse/forms/ "Notice of Lien Form and Instructions". This form is required by the United States Department of Health and Human Services (HHS) to be used when enforcing child support obligations by lien. It shall be used in intrastate and interstate cases.

Authority: T.C.A. §§ 4-5-202, 36-5-901 et seq., and 36-5-912; 42 U.S.C. §§ 652, 654(9)(E), and 666; and United States Department of Health and Human Services Office of Child Support Enforcement Action Transmittal 01-06 (April 4, 2001) and Action Transmittal 05-04 (January 4, 2005).

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services on 09/30/2009, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/26/09

Rulemaking Hearing(s) Conducted on: (add more dates). 08/17/20; 08/20/09

DEBRA E BATTS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires May 22, 2010

Date: 9-30-09

Signature: Barbara Broersma

Name of Officer: Barbara Broersma

Title of Officer: Assistant General Counsel
Tennessee Department of Human Service

Subscribed and sworn to before me on: September 30, 2009

Notary Public Signature: Debra E. Batts

My commission expires on: May 22, 2010

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

R E Cooper Jr

Robert E. Cooper, Jr.
Attorney General and Reporter

10-21-09
Date

Department of State Use Only

Filed with the Department of State on: 10/29/09

Effective on: 1/27/10

Tre Hargett

Tre Hargett
Secretary of State

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PUBLICATIONS

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Date(s), Time(s) and Place(s) of Public Hearing(s): August 17, 2009, 1:30 p.m. CDT, Department of Human Services, 2nd Floor Board Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee 37243; August 20, 2009, 6:30 p.m. CDT, 2nd Floor Auditorium, Donnely J. Hill State Office Building, 170 North Main Street, Memphis, Tennessee 38103; August 20, 2009, 6:30 p.m. EDT, Conference Room A, 7th Floor, 531 Henley Street, Knoxville, Tennessee 37902.

A public hearing was held on the date, time and place noted above by the Department of Human Services to receive comments regarding amendments to the above referenced rules. No comments were received.

Regulatory Flexibility Addendum

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The Child Support Enforcement Program is governed by Title IV-D of the Social Security Act, 42 U.S.C.A. §§601 et seq. For purposes of Acts 2007, Chapter 464, the Regulatory Flexibility Act, the Department of Human Services certifies that these rulemaking hearing rules comply with existing federal law, such that, pursuant to Section 6 of the Regulatory Flexibility Act, the Regulatory Flexibility Act's provisions do not apply to these rules. In addition, these rulemaking hearing rules do not appear to affect small businesses as defined in the Act because these rules are related to the determination of the appropriate amount of child support for minor children who do not reside with both parents. These rules do not regulate or attempt to regulate businesses.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The amended rules proposed by the Department of Human Services in Chapter 1240-02-05 pertain to the instructions used by the Title IV-D Agency to collect current support and overdue support by filing notices of lien against the real and personal property of child support obligors. The amended rules correct several T.C.A. § cites and either add or substitute clarifying language.

Rule 1240-02-05-.02(2) and 1240-02-05-.02(2)(a) are amended by deleting the references to "T.C.A. § 36-5-101(a)(5)" and "Tennessee Code Annotated, Section 36-5-101(a)(5)" and substituting instead the reference "T.C.A. § 36-5-101(f)(1)".

Rule 1240-02-05-.02(2) is also amended by deleting the reference to subsection "36-5-101(g)" and substituting instead the reference to subsection "36-5-501(g)" and by adding the phrase "thus the date payment is made is affected by the operation of the income assignment."

Rule 1240-02-05-.02(13)(a) is amended by deleting the references to "§ 36-5-101(a)(5) and § 36-5-101(g)" and substituting instead the references "§ 36-5-101(f)(1) and § 36-5-501(g)" respectively. The rule is further amended by adding the clarifying language following § 36-5-501(g) "thus the date payment is made is affected by the operation of the income assignment."

Rule 1240-02-05-.02(13)(b) is amended by deleting the reference to "§ 36-5-101(a)(5)" and substituting instead the reference "§ 36-5-101(f)1)". The rule is further amended by deleting the reference to "1240-2-5.02(b)" and substituting instead "1240-02-05-.02(2)(b)."

Rule 1240-02-05-.02(13)(c) is amended by deleting the reference to "1240-2-5-.02(b)" and substituting instead "1240-02-05-.02(2)(b)."

Rule 1240-02-05-13(a)(1) is amended by deleting the language in "13(a)(1)" and substituting "Whether there is a mistake as to the identity of the persons or entities to whom the administrative action has been directed;" for clarification.

Rule 1240-02-05-.16 is amended by deleting the second paragraph in the lien notice and instructions and substituting instead the following language "The form, number OMB-0970-0153, and instructions are available in Adobe PDF at: http://www.acf.hhs.gov/programs/cse/forms/ 'Notice of Lien Form and Instructions'. This form is required by the United States Department of Health and Human Services (HHS) to be used when enforcing child support obligations by lien. It shall be used in intrastate and interstate cases."

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

There are no substantive changes in law in the regulations.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Parents under court order to make child support payments are the persons most affected by this rule. There were no comments received during the rulemaking hearing process. Three (3) public hearings were held across the state. No written comments were received regarding the proposed rule.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

There are no anticipated increases or decreases in state and local government revenues and expenses resulting from the promulgation of this rule.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Barbara Broersma, Assistant General Counsel
10th Floor, Citizens Plaza State Office Building
400 Deaderick Street
Nashville, Tennessee 37243
(615) 313-2258

Bill Duffey, Program Director
Child Support Policy
12th Floor, Citizens Plaza State Office Building,
400 Deaderick Street,
Nashville, Tennessee 37243
(615) 313-4880

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Bill Duffey, Program Director
Child Support Policy
12th Floor, Citizens Plaza State Office Building,
400 Deaderick Street,
Nashville, Tennessee 37243
(615) 313-4880

(H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Bill Duffey, Program Director
Child Support Policy
12th Floor, Citizens Plaza State Office Building,
400 Deaderick Street,
Nashville, Tennessee 37243
(615) 313-4880

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A