

SHORT TITLE: Prisons and reformatories; allowing payment of child support from inmate trust fund; effective date.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 279

By: Cole

AS INTRODUCED

An Act relating to child support; amending 31 O.S. 1991, Section 1, which relates to homesteads and exemptions, and 57 O.S. 1991, Section 549, as amended by Section 5, Chapter 319, O.S.L. 1992 (57 O.S. Supp. 1992, Section 549), which relates to inmate trust accounts; clarifying exception to exemption for certain claims; requiring payment of court-ordered child support; authorizing execution against certain inmate funds; and providing an effective date.

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

SECTION 1. AMENDATORY 31 O.S. 1991, Section 1, is amended to read as follows:

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

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

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

3. All household and kitchen furniture held primarily for the personal, family or household use of such person or a dependent of such person;

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

5. Implements of husbandry necessary to farm the homestead;

6. Tools, apparatus and books used in any trade or profession of such person or a dependent of such person;

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

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

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

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

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

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

13. Such person's interest, not to exceed Three Thousand Dollars (\$3,000.00) in value, in one motor vehicle;

14. One gun, that is held primarily for the personal, family or household use of such person or a dependent of such person;

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

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

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

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

19. Such person's right to receive alimony, support, separate maintenance or child support payments to the extent reasonably necessary for the support of such person and any dependent of such person;

20. Subject to the Uniform Fraudulent Transfer Act, Section 112 et seq. of Title 24 of the Oklahoma Statutes, any interest in a retirement plan or arrangement qualified for tax exemption purposes under present or future Acts of Congress; provided, such interest shall be exempt only to the extent that contributions by or on behalf of a participant were not subject to federal income taxation to such participant at the time of such contributions, plus earnings and other additions thereon; provided further, any transfer or rollover contribution between retirement plans or arrangements which avoids current federal income taxation shall not be deemed a transfer which is fraudulent as to a creditor under the Uniform Fraudulent Transfer Act. "Retirement plan or arrangement qualified for tax exemption purposes" shall include without limitation, trusts, custodial accounts, insurance, annuity contracts and other properties and rights constituting a part thereof. By way of example and not by limitation, retirement plans or arrangements qualified for tax exemption purposes permitted under present Acts of Congress include defined contribution plans and defined benefit plans as defined under the Internal Revenue Code ("IRC"), individual

retirement accounts, individual retirement annuities, simplified employee pension plans, Keogh plans, IRC Section 403(a) annuity plans, IRC Section 403(b) annuities, and eligible state deferred compensation plans governed under IRC Section 457. This provision shall be in addition to and not a limitation of any other provision of the Oklahoma Statutes which grants an exemption from attachment or execution and every other species of forced sale for the payment of debts. This provision shall be effective for retirement plans and arrangements in existence on, or created after the effective date of this act; and

21. Such person's interest in a claim for personal bodily injury, death or workers' compensation ~~claim~~, for a net amount not in excess of Fifty Thousand Dollars (\$50,000.00), except as otherwise provided by law, but not including any claim for exemplary or punitive damages.

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

C. In no event shall any property under paragraph 5 or 6 of subsection A of this section, the total value of which exceeds Five Thousand Dollars (\$5,000.00), of any person residing in this state be deemed exempt.

SECTION 2. AMENDATORY 57 O.S. 1991, Section 549, as amended by Section 5, Chapter 319, O.S.L. 1992 (57 O.S. Supp. 1992, Section 549), is amended to read as follows:

Section 549. A. The State Board of Corrections shall have the following powers and duties with respect to the operation of prison industries and administration of inmate trust funds:

1. The power to make leases or other contracts consistent with the operation of prison industries, and to set aside land or facilities for the use of such industry;

2. The power to establish conditions for expenditures by the Department of Corrections from the Industries Revolving Fund;

3. The power to negotiate wages and working conditions on behalf of prisoners employed in prison industries;

4. The power to collect wages on behalf of the prisoner, to apportion inmate wages in accordance with the law; and the duty to preserve those wages reserved for the prisoner in an account for his benefit, and to establish procedures by which the prisoner can draw funds from this account under the conditions and limitations and for the purposes allowed by law; and

5. The duty to establish the percentages of such wages which shall be available for apportionment to inmate savings; to the inmate for his personal use; to the lawful dependents of the inmate, if any; to the victim of the inmate's crime; for payment of creditors; for payment of costs and expenses for criminal actions against such inmate; and to the Department of Corrections for costs of incarceration. Provided, that not less than twenty percent (20%) of such wages shall be placed in an account, payable to the prisoner upon his discharge or upon assignment to a prerelease program.

Funds from this account may be used by the inmate for fees or costs in filing a civil action as defined in Sections 151 et seq. of Title 28 of the Oklahoma Statutes or for federal action as defined in ~~Sections 1911 et seq. of Title 28 of the United States Code~~ 28 U.S.C., Section 1911 et seq.

B. The State Board of Corrections shall cause to be placed in an account income from ~~the~~ each inmate's employment and any other income or benefits accruing to or payable to and for the benefit of ~~said~~ an inmate, including any workers' compensation or Social Security benefits.

1. From this account the State Board of Corrections may charge any inmate employed in private prison industries or any other inmate for costs of incarceration not to exceed fifty percent (50%) of any deposits made to said account.

2. The Department of Corrections shall pay into the Crime Victims Compensation Revolving Fund, Section 142.17 of Title 21 of the Oklahoma Statutes, an amount equal to five percent (5%) of the gross wages earned by inmates employed in a private prison industries program, said amount to be paid from the amount deducted for cost of incarceration.

3. Withdrawals and deposits shall be made according to rules and regulations established by the Board of Corrections.

4. Inmate trust funds shall be subject to garnishment, income assignment or other execution for claims for court-ordered child support which shall have priority over all other claims against such funds.

5. Inmate trust funds shall be subject to execution for collection of court-ordered money judgments.

C. The Department of Corrections may assess costs of incarceration against all inmates beginning on the effective date of this act. Such costs shall be a debt of the inmate owed to the Department of Corrections and may be collected as provided by law for collection of any other civil debt. In addition to the provisions of this section authorizing expenditure of inmate trust funds for costs of incarceration, any monies received for costs of incarceration shall be deposited in the Department of Corrections Revolving Fund.

SECTION 3. This act shall become effective September 1, 1993.

44-1-0358

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