

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2734

By: Morrissette

4
5 AS INTRODUCED

6 An Act relating to homestead and exemptions; amending
7 31 O.S. 2011, Section 1.1, which relates to
8 exemptions from process; providing exemption for
9 disabled debtor; adding guideline for court
consideration when debtor is disabled; and providing
an effective date.

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

13 SECTION 1. AMENDATORY 31 O.S. 2011, Section 1.1, is
14 amended to read as follows:

15 Section 1.1 A. Following the issuance of an execution,
16 attachment, or garnishment, except process to collect a judgment or
17 order for child support or maintenance of children or in cases in
18 which the court has limited or reduced the application of this
19 section pursuant to Section 142.18 of Title 21 of the Oklahoma
20 Statutes, the debtor may file with the court an application
21 requesting a hearing to exempt from such process by reason of undue
22 hardship that portion of any earnings from personal services
23 necessary for the maintenance of a family or other dependents
24 supported wholly or partially by the labor of the debtor. A debtor

1 with no family or other dependents may not claim an exemption under
2 this section, unless the debtor is disabled as determined by the
3 Social Security Administration. A hearing on the application shall
4 be set and conducted in the manner provided by Section 1172.2 of
5 Title 12 of the Oklahoma Statutes and subsection C of Section 1174
6 of Title 12 of the Oklahoma Statutes.

7 B. In determining the existence of an undue hardship, the court
8 should consider the income and expenses of the family and other
9 dependents, and the standard of living created by the income and
10 expenses. The court should also consider the standard of living in
11 relationship to the minimal subsistence needs of the debtor's family
12 and other dependents, with comparison to the minimal subsistence
13 standards in the community, in regard to basic shelter, food,
14 clothing, personal necessities and transportation. In the case of a
15 disabled debtor, the court shall consider the standard of living in
16 relationship to the minimal subsistence needs of the debtor, taking
17 into account the additional needs due to the disability of the
18 debtor. The court should then determine if the lack of the funds
19 sought to be exempt would be an undue hardship by creating less than
20 a minimal level of subsistence. If deprivation of these earnings
21 would create an undue hardship on a disabled debtor or the debtor
22 and the family or other dependents the debtor supports, the court
23 may:

24 1. Order all or a portion of the personal earnings exempt; or

1 2. In the case of a continuing earnings garnishment pursuant to
2 Section 1173.4 of Title 12 of the Oklahoma Statutes, exempt all or a
3 portion of the personal earnings withheld within the thirty (30)
4 days preceding the filing of the claim for exemption or modify or
5 stay the garnishment for a period of time not to exceed the
6 remainder of the term of the garnishment.

7 SECTION 2. This act shall become effective November 1, 2012.

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9 53-2-8014 EK 12/30/11

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