

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 SENATE BILL 274

By: Brecheen

4  
5 AS INTRODUCED

6 An Act relating to prisoner lawsuits; amending 57  
7 O.S. 2011, Section 566.3, which relates to affidavit  
8 of inability to pay; prohibiting the state from  
9 paying certain costs and fees; and providing an  
effective date.

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

11 SECTION 1. AMENDATORY 57 O.S. 2011, Section 566.3, is  
12 amended to read as follows:

13 Section 566.3. A. 1. If an applicant for in forma pauperis is  
14 a prisoner and the prisoner brings an action of any kind, upon  
15 filing, the court shall order the prisoner to pay, as a partial  
16 payment of any court costs required by law, before the commencement  
17 of the action, a first-time payment of twenty percent (20%) of the  
18 deposits of the preceding six (6) months to the trust account of the  
19 prisoner administered by the confining agency and thereafter monthly  
20 payments of twenty percent (20%) of the deposits of the preceding  
21 month to the account, but only if the prisoner does not have enough  
22 funds to pay the total costs required by law at the time of filing.  
23 In those cases where the prisoner has sufficient funds available,  
24 the prisoner shall be ordered to pay the required costs before the

1 action may commence. The confining agency shall withdraw monies  
2 maintained in the trust account for payment of court fees and shall  
3 forward the monies collected at any time the monies exceed Ten  
4 Dollars (\$10.00) to the appropriate court clerk, or clerks if  
5 multiple courts are involved, until the actual court costs are paid  
6 in full. If the prisoner is discharged before payment in full, the  
7 court clerk shall be notified of the reported forwarding address and  
8 date of discharge of the prisoner. The prisoner must file a  
9 certified copy of the trust account records of the prisoner with the  
10 court that reflects the balance and activity of the previous six (6)  
11 months at the time the petition is filed. If the prisoner is on  
12 probation or parole, the prisoner will file certified copies of bank  
13 or savings statements of the account and income receipts for the  
14 prior six (6) months.

15 2. Nothing in this section prevents a prisoner from authorizing  
16 payment beyond that required by law or the Department of Corrections  
17 or political subdivision from forwarding payment beyond that  
18 required by law if the prisoner has the funds available.

19 3. The court may dismiss any civil action in which the prisoner  
20 has failed to pay fees and costs assessed by the court and it is  
21 determined the prisoner has funds available and did not pay the  
22 required fees and costs.

23 4. If a prisoner is found to be indigent and totally without  
24 any funds pursuant to this section at the time of filing, the case

1 may proceed without prepayment of fees or partial fees. Even in  
2 those cases where the court finds the prisoner is without funds, the  
3 court shall assess costs against the prisoner, establish a payment  
4 schedule and order the costs paid when the prisoner has funds.

5 B. 1. An affidavit of inability to pay containing complete  
6 information as to the identity of the prisoner, prisoner  
7 identification number, nature and amount of income, income of the  
8 spouse of the prisoner, property owned, cash or checking accounts,  
9 dependents, debts and monthly expenses shall be filed with the  
10 court. In addition to the information required above, the affidavit  
11 shall contain the following statements: "I am unable to pay the  
12 court costs at this time. I verify that the statements made in this  
13 affidavit are true and correct." The affidavit shall be sworn as  
14 required by law.

15 2. The Attorney General or other counsel for the defendant  
16 shall be authorized to receive information from any source verifying  
17 the financial information given by the prisoner.

18 3. When considering the ability of a prisoner to pay fees and  
19 costs and establishing a payment schedule, the court shall consider,  
20 but is not limited to consideration of, the following:

- 21 a. all living support received by the person from any  
22 source, including the state, whether in money or any  
23 form of services,
- 24 b. any income of a spouse,

- 1           c.    gifts,
- 2           d.    savings accounts,
- 3           e.    retirement plans,
- 4           f.    trust accounts,
- 5           g.    personal property,
- 6           h.    inmate trust accounts, and
- 7           i.    any dispositions of property, real or personal, in the
- 8                 past twelve (12) months.

9           C.    A court, in which an affidavit of inability to pay has been  
10 filed, shall dismiss the action in whole or in part upon a finding  
11 that the allegation of poverty is false.  If a portion of the action  
12 is dismissed, the court shall also designate the issues and  
13 defendants on which the action is to proceed without prepaying  
14 costs.  This order is not subject to an interlocutory appeal.

15           D.    In determining whether the allegation of poverty is false,  
16 the court is authorized to hold a hearing, before or after service  
17 of process, on its own motion or upon the motion of a party.

18           E.    If the court concludes, based on information contained in  
19 the affidavit of inability to pay or other information available to  
20 the court, that the prisoner is able to prepay part of the fees or  
21 costs required, then the court shall order a partial payment to be  
22 made as a condition precedent to the commencement and further  
23 prosecution of the action.

1 F. Notwithstanding any filing fee, or any portion thereof, that  
2 may have been paid, the court shall dismiss the case at any time if  
3 the court determines that:

4 1. The allegation of poverty is untrue; or

5 2. The action or appeal:

6 a. is frivolous or malicious,

7 b. fails to state a claim on which relief may be granted,

8 or

9 c. seeks monetary relief against a defendant who is

10 immune from such relief.

11 G. 1. The Department of Corrections and each sheriff is hereby  
12 authorized to adopt a grievance procedure at its institutions for  
13 receiving and disposing of any and all grievances by prisoners  
14 against the Department of Corrections or any entity contracting with  
15 the Department of Corrections to provide correctional services, or  
16 any officials or employees of either the Department or correctional  
17 services contractor or a sheriff, deputies of the sheriff or  
18 employees of the county, which arise while a prisoner is within the  
19 custody or under the supervision of the Department or sheriff. The  
20 grievances may include, but are not limited to, any and all claims  
21 seeking monetary damages or any other form of relief otherwise  
22 authorized by law. All such grievance procedures, including the  
23 prisoner disciplinary process, shall be deemed to be the exclusive  
24 internal administrative remedy for complaints and grievances.

1           2. No court of the State of Oklahoma shall entertain a  
2 grievance, petition, or complaint of a prisoner unless and until the  
3 prisoner has exhausted all the remedies as provided in the grievance  
4 procedure of the Director of the Department of Corrections or  
5 sheriff. Nothing in this section shall modify requirements of The  
6 Governmental Tort Claims Act. The State of Oklahoma shall not be  
7 required to pay any costs and fees related to a grievance, petition  
8 or complaint filed in a court of this state by a prisoner unless  
9 otherwise required by federal law.

10           3. Failure to timely institute administrative review of a claim  
11 shall be considered an abandonment, and upon motion of the  
12 defendants, supported by an affidavit of the defendant that the  
13 prisoner has failed to timely institute and exhaust the  
14 administrative remedy, the court shall enter a judgment of dismissal  
15 with prejudice in that cause of action. Strict adherence to the  
16 notice requirement established in the grievance procedures shall be  
17 complied with by the prisoner or the attorney of the prisoner.

18           4. In addition to any other provisions of law providing for the  
19 confidentiality of records of the Department of Corrections or a  
20 sheriff, all reports, investigations, and like supporting documents  
21 prepared by the Department or sheriff for purposes of responding to  
22 the request of a prisoner for an administrative remedy shall be  
23 deemed to be prepared in anticipation of litigation and are  
24 confidential and not subject to discovery by the prisoner in any

1 civil action or subject to release under the Oklahoma Open Records  
2 Act. All formal written responses to the grievance of the prisoner  
3 shall be furnished to the prisoner as provided for in the grievance  
4 procedure.

5 5. Any prisoner who is allegedly aggrieved by an adverse  
6 decision by the Department of Corrections or a sheriff rendered  
7 pursuant to any grievance procedure must file the appropriate civil  
8 cause of action or application for extraordinary writ, within one  
9 hundred eighty (180) days after the final decision is issued and  
10 within the limitations period set forth in The Governmental Tort  
11 Claims Act, to the appropriate court alleging specifically what  
12 legal right was violated and what remedy exists.

13 H. Nothing in this section shall be construed as waiving the  
14 sovereign immunity or the tort immunity of the state, its agencies,  
15 officers or employees for injuries allegedly suffered while in the  
16 custody of the state and its agency or any county, sheriff, or  
17 officers or employees of the county for injuries allegedly suffered  
18 while in the custody of the county.

19 I. "Prisoner" as used herein shall include, but not be limited  
20 to, a person in custody or whose claims arose during custody.

21 SECTION 2. This act shall become effective November 1, 2013.

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