

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 661

By: Sparks

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5  
6 AS INTRODUCED

7 An Act relating to small claims procedure; amending  
8 12 O.S. 2011, Sections 1751, as amended by Section 1,  
Chapter 282, O.S.L. 2012, 1757 and 1759, as amended  
9 by Section 2, Chapter 282, O.S.L. 2012 (12 O.S. Supp.  
2016, Sections 1751 and 1759), which relate to  
10 jurisdiction and transfer; expanding actions eligible  
for small claims procedure; authorizing award of  
11 certain fees; modifying requirements and procedures  
for transfer from small claims docket; increasing  
12 amount of claim for transfer of certain cases; and  
providing an effective date.

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

15 SECTION 1. AMENDATORY 12 O.S. 2011, Section 1751, as  
16 amended by Section 1, Chapter 282, O.S.L. 2012 (12 O.S. Supp. 2016,  
17 Section 1751), is amended to read as follows:

18 Section 1751. A. The following suits may be brought under the  
19 small claims procedure:

20 1. Actions for the recovery of money based on contract or tort,  
21 including subrogation claims, but excluding libel or slander, in  
22 which the amount sought to be recovered, exclusive of attorney fees  
23 and other court costs, does not exceed ~~Seven Thousand Five Hundred~~  
24 ~~Dollars (\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00);

1           2. Actions to replevy personal property the value of which does  
2 not exceed ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~ Ten  
3 Thousand Dollars (\$10,000.00). If the claims for possession of  
4 personal property and to recover money are pled in the alternative,  
5 the joinder of claims is permissible if neither the value of the  
6 property nor the total amount of money sought to be recovered,  
7 exclusive of attorney fees and other costs, exceeds ~~Seven Thousand~~  
8 ~~Five Hundred Dollars (\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00);  
9 and

10           3. Actions in the nature of interpleader, as provided for in  
11 Section 2022 of this title, in which the value of the money which is  
12 the subject of such action does not exceed ~~Seven Thousand Five~~  
13 ~~Hundred Dollars (\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00).

14           B. No action may be brought under the small claims procedure by  
15 any collection agency, collection agent, or assignee of a claim,  
16 except that an action may be brought against an insurer or third-  
17 party administrator by a health care provider as that term is  
18 defined in Section 6552 of Title 36 of the Oklahoma Statutes, who is  
19 an assignee of benefits available under an accident and health  
20 insurance policy, trust, plan, or contract.

21           C. In those cases which are uncontested, the amount of attorney  
22 fees allowed shall not exceed ten percent (10%) of the judgment.  
23 Additionally, upon application to the court supported by sufficient  
24

1 documentation, the court may award attorney fees not to exceed  
2 twenty-five percent (25%) of the judgment.

3 D. No action may be brought under the small claims procedure  
4 for any alleged claim against any city, county or state agency, or  
5 employee of a city, county or state agency, if the claim alleges  
6 matters arising from incarceration, probation, parole or community  
7 supervision.

8 E. No action by a plaintiff who is currently incarcerated in  
9 any jail or prison in the state may be brought against any person or  
10 entity under the small claims procedure.

11 F. A small claims affidavit shall include a statement  
12 acknowledging that the plaintiff is disclaiming a right to a trial  
13 by jury on the merits of the case.

14 SECTION 2. AMENDATORY 12 O.S. 2011, Section 1757, is  
15 amended to read as follows:

16 Section 1757. A. For matters in which the claim is less than  
17 Seven Thousand Five Hundred Dollars (\$7,500.00):

18 1. On motion of the defendant, a small claims action may, in  
19 the discretion of the court, be transferred from the small claims  
20 docket to another docket of the court; provided, that the motion is  
21 filed and notice is given by the defendant to the opposing party or  
22 parties by mailing a copy of the motion at least forty-eight (48)  
23 hours prior to the time fixed in the order for defendant to appear  
24

1 or answer; and provided further, that the defendant deposit the sum  
2 of Fifty Dollars (\$50.00) as the court cost.

3 ~~B.~~ 2. The motion to transfer shall be heard at the time fixed  
4 in the order and consideration shall be given to any hardship on the  
5 plaintiff, complexity of the case, reason for transfer, and other  
6 relevant matters. If the motion is denied, the action shall remain  
7 on the small claims docket.

8 B. For matters in which the claim is Seven Thousand Five  
9 Hundred Dollars (\$7,500.00) or more, on motion of the defendant, a  
10 small claims action shall be transferred from the small claims  
11 docket to another docket of the court; provided, that the motion is  
12 filed and notice is given by the defendant to the opposing party or  
13 parties by mailing a copy of the motion at least forty-eight (48)  
14 hours prior to the time fixed in the order for defendant to appear  
15 or answer; and provided, further, that the defendant deposit the sum  
16 of Fifty Dollars (\$50.00) as the court cost.

17 C. If the motion is granted, the defendant as movant shall  
18 present within ten (10) days and the court shall cause to be filed  
19 an order on a form prepared by the Administrative Office of the  
20 Courts transferring the action from the small claims docket to  
21 another docket. If the transfer order is not filed by the movant  
22 within ten (10) days, it shall be reinstated upon the small claims  
23 docket upon motion of the small claims plaintiff, and no further  
24 transfer shall be authorized. Before the transfer is effected, the

1 movant shall deposit with the clerk the court costs that are charged  
2 in other civil cases under Sections 151 through 157 of Title 28 of  
3 the Oklahoma Statutes, less any sums that have already been paid to  
4 the clerk. After this filing, the costs and other procedural  
5 matters shall be governed as in other civil actions, and not under  
6 small claims procedure.

7 ~~C.~~ D. Within twenty (20) days of the date the transfer order  
8 is signed, the plaintiff shall file a petition that conforms to the  
9 standards of pleadings prescribed by the Oklahoma Pleading Code.  
10 The answer of the defendant shall be due within twenty (20) days  
11 after the filing of the petition and the reply of the plaintiff in  
12 ten (10) days after the answer is filed. If the plaintiff  
13 ultimately prevails in the action so transferred by the defendant, a  
14 reasonable attorney's fee shall be allowed to plaintiff's attorney  
15 to be taxed as costs in the case, in addition to any sanctions which  
16 the court may deem appropriate.

17 SECTION 3. AMENDATORY 12 O.S. 2011, Section 1759, as  
18 amended by Section 2, Chapter 282, O.S.L. 2012 (12 O.S. Supp. 2016,  
19 Section 1759), is amended to read as follows:

20 Section 1759. A. Except as provided by subsection C of this  
21 section, if a claim, a counterclaim, or a setoff is filed, prior to  
22 the expiration of the time prescribed by Section 1758 of this title,  
23 for an amount in excess of ~~Seven Thousand Five Hundred Dollars~~  
24 ~~(\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00), the action shall be

1 transferred to another docket of the district court unless both  
2 parties agree in writing and file the agreement with the papers in  
3 the action that the claim, counterclaim, or setoff shall be tried  
4 under the small claims procedure. If such an agreement has not been  
5 filed, a judgment in excess of ~~Seven Thousand Five Hundred Dollars~~  
6 ~~(\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00) may not be enforced  
7 for the part that exceeds ~~Seven Thousand Five Hundred Dollars~~  
8 ~~(\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00). If the action is  
9 transferred to another docket of the district court, the person  
10 whose claim exceeded ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~  
11 Ten Thousand Dollars (\$10,000.00) shall deposit with the clerk the  
12 court costs that are charged in other cases, less any sums that have  
13 been already paid to the clerk, or the claim shall be dismissed and  
14 the remaining claims, if any, shall proceed under the small claims  
15 procedure.

16 B. If the action is transferred to another docket of the  
17 district court, the plaintiff shall file a petition that conforms to  
18 the standards for pleadings prescribed by the Oklahoma Pleading  
19 Code, Section 2001 et seq. of this title, within twenty (20) days  
20 from the timely filing of the claim, counterclaim, or setoff. The  
21 answer of the defendant shall be due within twenty (20) days after  
22 the filing of the petition ~~and the reply of the plaintiff shall be~~  
23 ~~due within ten (10) days after the answer is filed.~~

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1 C. Except as provided by Section 1757 of this title, if a  
2 defendant does not file a counterclaim within the period prescribed  
3 by Section 1758 of this title, the action shall not be transferred  
4 to another docket of the district court.

5 SECTION 4. This act shall become effective November 1, 2017.

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