

1 ENGROSSED SENATE
2 BILL NO. 661

By: Sparks, Sykes and
Stanislawski of the Senate

3 and

4 Kannady of the House

5
6
7 [small claims procedure - jurisdiction and transfer
8 - small claims procedure - transfer from small claims
9 docket - effective date]
10

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

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

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

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

22 2. Actions to replevy personal property the value of which does
23 not exceed ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~ Ten
24 Thousand Dollars (\$10,000.00). If the claims for possession of

1 personal property and to recover money are pled in the alternative,
2 the joinder of claims is permissible if neither the value of the
3 property nor the total amount of money sought to be recovered,
4 exclusive of attorney fees and other costs, exceeds ~~Seven Thousand~~
5 ~~Five Hundred Dollars (\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00);
6 and

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

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

18 C. In those cases which are uncontested, the amount of attorney
19 fees allowed shall not exceed ten percent (10%) of the judgment.
20 Additionally, upon application to the court supported by sufficient
21 documentation, the court may award attorney fees not to exceed
22 twenty-five percent (25%) of the judgment.

23 D. No action may be brought under the small claims procedure
24 for any alleged claim against any city, county or state agency, or

1 employee of a city, county or state agency, if the claim alleges
2 matters arising from incarceration, probation, parole or community
3 supervision.

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

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

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

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

14 1. On motion of the defendant, a small claims action may, in
15 the discretion of the court, be transferred from the small claims
16 docket to another docket of the court; provided, that the motion is
17 filed and notice is given by the defendant to the opposing party or
18 parties by mailing a copy of the motion at least forty-eight (48)
19 hours prior to the time fixed in the order for defendant to appear
20 or answer; and provided, further, that the defendant deposit the sum
21 of Fifty Dollars (\$50.00) as the court cost.

22 ~~B.~~ 2. The motion to transfer shall be heard at the time fixed
23 in the order and consideration shall be given to any hardship on the
24 plaintiff, complexity of the case, reason for transfer, and other

1 relevant matters. If the motion is denied, the action shall remain
2 on the small claims docket.

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

12 C. If the motion is granted, the defendant as movant shall
13 present within ten (10) days and the court shall cause to be filed
14 an order on a form prepared by the Administrative Office of the
15 Courts transferring the action from the small claims docket to
16 another docket. If the transfer order is not filed by the movant
17 within ten (10) days, it shall be reinstated upon the small claims
18 docket upon motion of the small claims plaintiff, and no further
19 transfer shall be authorized. Before the transfer is effected, the
20 movant shall deposit with the clerk the court costs that are charged
21 in other civil cases under Sections 151 through 157 of Title 28 of
22 the Oklahoma Statutes, less any sums that have already been paid to
23 the clerk. After this filing, the costs and other procedural
24

1 matters shall be governed as in other civil actions, and not under
2 small claims procedure.

3 ~~C.~~ D. Within twenty (20) days of the date the transfer order is
4 signed, the plaintiff shall file a petition that conforms to the
5 standards of pleadings prescribed by the Oklahoma Pleading Code.
6 The answer of the defendant shall be due within twenty (20) days
7 after the filing of the petition and the reply of the plaintiff in
8 ten (10) days after the answer is filed.

9 1. For matters in which the claim is less than Seven Thousand
10 Five Hundred Dollars (\$7,500.00), if ~~if~~ the plaintiff ultimately
11 prevails in the action so transferred by the defendant, a reasonable
12 ~~attorney's~~ attorney fee shall be allowed to plaintiff's attorney to
13 be taxed as costs in the case, in addition to any sanctions which
14 the court may deem appropriate.

15 2. For matters in which the claim is Seven Thousand Five
16 Hundred Dollars (\$7,500.00) or more, if attorney fees are otherwise
17 allowed by law, a reasonable attorney fee shall be allowed to be
18 taxed as costs in the case, in addition to any sanctions which the
19 court may deem appropriate.

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

23 Section 1759. A. Except as provided by subsection C of this
24 section, if a claim, a counterclaim, or a setoff is filed, prior to

1 the expiration of the time prescribed by Section 1758 of this title,
2 for an amount in excess of ~~Seven Thousand Five Hundred Dollars~~
3 ~~(\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00), the action shall be
4 transferred to another docket of the district court unless both
5 parties agree in writing and file the agreement with the papers in
6 the action that the claim, counterclaim, or setoff shall be tried
7 under the small claims procedure. If such an agreement has not been
8 filed, a judgment in excess of ~~Seven Thousand Five Hundred Dollars~~
9 ~~(\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00) may not be enforced
10 for the part that exceeds ~~Seven Thousand Five Hundred Dollars~~
11 ~~(\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00). If the action is
12 transferred to another docket of the district court, the person
13 whose claim exceeded ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~
14 Ten Thousand Dollars (\$10,000.00) shall deposit with the clerk the
15 court costs that are charged in other cases, less any sums that have
16 been already paid to the clerk, or the claim shall be dismissed and
17 the remaining claims, if any, shall proceed under the small claims
18 procedure.

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

1 the filing of the petition ~~and the reply of the plaintiff shall be~~
2 ~~due within ten (10) days after the answer is filed.~~

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

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

8 Passed the Senate the 22nd day of March, 2017.

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Presiding Officer of the Senate

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12 Passed the House of Representatives the ____ day of _____,
13 2017.

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Presiding Officer of the House
of Representatives

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