

1 **SENATE FLOOR VERSION**

2 February 14, 2017

3 SENATE BILL NO. 661

By: Sparks

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5
6 An Act relating to small claims procedure; amending
7 12 O.S. 2011, Sections 1751, as amended by Section 1,
8 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.
10 2016, Sections 1751 and 1759), which relate to
11 jurisdiction and transfer; expanding actions eligible
12 for small claims procedure; authorizing award of
13 certain fees; modifying requirements and procedures
14 for transfer from small claims docket; increasing
15 amount of claim for transfer of certain cases; and
16 providing an effective date.

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

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

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

23 1. Actions for the recovery of money based on contract or tort,
24 including subrogation claims, but excluding libel or slander, in
which the amount sought to be recovered, exclusive of attorney fees
and other court costs, does not exceed ~~Seven Thousand Five Hundred~~
~~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 is
8 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.

6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
7 February 14, 2017 - DO PASS
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