

SHORT TITLE: Civil procedure; prohibiting certain persons from bringing certain action under small claims procedure; emergency.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 545

By: Dickerson

AS INTRODUCED

An Act relating to civil procedure; amending 12 O.S.

1991, Sections 1751, as amended by Section 1, Chapter 35, O.S.L. 1992, and 1757 (12 O.S. Supp. 1992, Section 1751), which relate to suits authorized under small claims procedure and transfer of action from small claims to other docket; prohibiting certain persons from bringing certain actions under small claims procedure; requiring transfer of certain action to other docket; and declaring an emergency.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 1751, as amended by Section 1, Chapter 35, O.S.L. 1992 (12 O.S. Supp. 1992, Section 1751), is amended to read as follows:

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

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

Dollars (\$2,500.00). Libel or slander actions may not be brought in the small claims court;

2. Actions to replevy personal property the value of which does not exceed Two Thousand Five Hundred Dollars (\$2,500.00). If the claims for possession of personal property and to recover money are pleaded in the alternative, the joinder of claims is permissible if neither the value of the property nor the total amount of money sought to be recovered, exclusive of attorneys fees and other costs, does exceed Two Thousand Five Hundred Dollars (\$2,500.00); and

3. Actions in the nature of interpleader, as provided for in Section 2022 of this title, in which the value of the money which is the subject of such action does not exceed Two Thousand Five Hundred Dollars (\$2,500.00).

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

C. A person who is currently incarcerated or who has been incarcerated in any state correctional facility or county or city jail shall not bring an action against the state, county or city government or its employees under the small claims procedure for any claim arising during such period of incarceration.

D. In those cases which are uncontested, the amount of attorneys fees allowed shall not exceed ten percent (10%) of the judgment.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 1757, is amended to read as follows:

Section 1757. A. On motion of the defendant the action may, in the discretion of the court, be transferred from the small claims

docket to another docket of the court, provided said motion is filed and notice given by the defendant to opposing party by mailing a copy of the motion at least forty-eight (48) hours prior to the time fixed in the order for defendant to appear or answer and, provided further, that the defendant deposit the sum of Fifty Dollars (\$50.00) as the court cost.

B. If an action is filed under the small claims procedure in violation of subsection C of Section 1751 of this title or the defendant is a state correctional facility or city or county jail, the court shall transfer the action from the small claims docket to another docket of the court.

C. The motion shall be heard at the time fixed in the order and consideration shall be given to the hardship on the plaintiff, complexity of the case, reason for transfer, and other relevant matters. If the motion is denied, the action shall remain on the small claims docket. If the motion is granted, the court shall file an order transferring the action from the small claims docket to another docket, and thereafter the procedure prescribed by Title 28 of the Oklahoma Statutes, Sections 151 to 157, shall prevail as to other costs, the action shall proceed as other civil actions and shall not proceed under the small claims procedure. Within twenty (20) days of the date the transfer order is signed, the plaintiff shall file a petition that conforms to the standards of pleadings prescribed by the Oklahoma Pleading Code. The answer of the defendant shall be due within twenty (20) days after the filing of the petition and the reply of the plaintiff in ten (10) days after the answer is filed. If the plaintiff ultimately prevails in the action so transferred by the defendant, a reasonable attorney's fee shall be allowed to plaintiff's attorney to be taxed as costs in the case.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-1-0499

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