

ENROLLED SENATE
BILL NO. 404

By: Henry, Maddox and
Littlefield of the Senate

and

Steidley and Roberts of the
House

An Act relating to small claims procedure;
amending 12 O.S. 1991, Sections 1751, as amended
by Section 1, Chapter 35, O.S.L. 1992, 1758 and
1759 (12 O.S. Supp. 1994, Section 1751), which
relate to suits, claims, counterclaims and
setoffs authorized under small claims procedure;
increasing maximum amount of small claims
actions, claims, counterclaims and setoffs;
expanding exception to action prohibition;
clarifying time limitation for certain filing;
prohibiting transfer of action under certain
circumstances; and providing an effective date.

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. 1994,
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~~ Four Thousand Five Hundred Dollars
(\$4,500.00);

2. Actions to replevy personal property the value of which does
not exceed ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Four
Thousand Five Hundred Dollars (\$4,500.00). If the claims for
possession of personal property and to recover money are ~~pleaded~~
pled 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)~~ Four
Thousand Five Hundred Dollars (\$4,500.00); 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)~~ Four Thousand Five Hundred Dollars (\$4,500.00).

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 or third-
party administrator 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. 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 1758, is amended to read as follows:

Section 1758. No formal pleading, other than the claim and notice, shall be necessary, but if the defendant wishes to state new matter which constitutes a counterclaim or a setoff, he shall file a verified answer, a copy of which shall be delivered to the plaintiff in person, and filed with the clerk of the court not later than seventy-two (72) hours prior to the hour set for the first appearance of said defendant in such action. Such answer shall be made in substantially the following form:

COUNTERCLAIM OR SETOFF

In the District Court,
County of _____,
State of Oklahoma.

Plaintiff

vs.

Small Claims No. _____

Defendant

Claim of defendant.
STATE OF OKLAHOMA)
) ss
COUNTY OF _____)

_____, being first duly sworn, deposes and says: That said plaintiff is indebted to said defendant in the sum of \$_____ for _____, which amount defendant prays may be allowed as a claim against the plaintiff herein.

Subscribed and sworn to before me this _____ day of _____, 19__.

Notary Public (or Clerk or Judge)

SECTION 3. AMENDATORY 12 O.S. 1991, Section 1759, is amended to read as follows:

Section 1759. ~~If~~ A. Except as provided by subsection B of this section, if a claim, a counterclaim, or a setoff is filed, prior to the expiration of the time prescribed by Section 1758 of this title, for an amount in excess of ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Four Thousand Five Hundred Dollars (\$4,500.00), the action shall be transferred to another docket of the district court unless both parties agree in writing and file said agreement with the papers in the action that said claim, counterclaim, or setoff shall be tried under the small claims procedure. If such an agreement has not been filed, a judgment in excess of ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Four Thousand Five Hundred Dollars (\$4,500.00) may not be enforced for the part that exceeds ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Four Thousand Five Hundred Dollars (\$4,500.00). If the action is transferred to another docket of the district court, the person whose claim exceeded ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Four Thousand Five Hundred Dollars (\$4,500.00) shall deposit with the clerk the court costs that are charged in other cases, less any sums that have been already paid to the clerk, or his claim shall be dismissed and the remaining claims, if any, shall proceed under the small claims procedure.

B. Except as provided by Section 1757 of this title, if a defendant does not file a counterclaim within the period prescribed

by Section 1758 of this title, the action shall not be transferred to another docket of the district court.

SECTION 4. This act shall become effective November 1, 1995.

Passed the Senate the 25th day of April, 1995.

President of the Senate

Passed the House of Representatives the 10th day of April, 1995.

Speaker of the House of Representatives