

SHORT TITLE: Small claims procedure; increasing maximum amount of small claims actions, claims, counterclaims and setoffs; effective date.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 404

By: Henry

AS INTRODUCED

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, 1759, 1761, as amended by Section 2, Chapter 357, O.S.L. 1992, and 1764 (12 O.S. Supp. 1994, Sections 1751 and 1761), which relate to suits authorized under small claims procedure, claims, counterclaims and setoffs, request for reporter or jury, and fees; increasing maximum amount of small claims actions, claims, counterclaims and setoffs; conforming language; 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 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 1759, is amended to read as follows:

Section 1759. If a claim, a counterclaim, or a setoff is filed 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.

SECTION 3. AMENDATORY 12 O.S. 1991, Section 1761, as amended by Section 2, Chapter 357, O.S.L. 1992 (12 O.S. Supp. 1994, Section 1761), is amended to read as follows:

Section 1761. Actions under the small claims procedure shall be tried to the court without a jury, unless the amount of the claim, counterclaim, or setoff exceeds ~~One Thousand Five Hundred Dollars (\$1,500.00)~~ Four Thousand Five Hundred Dollars (\$4,500.00); provided, if either party wishes a reporter or if either party to an action in which the claim, counterclaim, or setoff exceeds ~~One Thousand Five Hundred Dollars (\$1,500.00)~~ Four Thousand Five Hundred Dollars (\$4,500.00) wishes a jury, he must notify the clerk of the court in writing at least two (2) working days before the date set for the defendant's appearance and must deposit Fifty Dollars (\$50.00) with said notice with the clerk. The plaintiff and the defendant shall have the right to offer evidence in their behalf by witnesses appearing at such hearing, and the judge may call such witnesses and order the production of such documents as he may deem appropriate. The hearing and disposition of such actions shall be

informal with the sole object of dispensing speedy justice between the parties.

SECTION 4. AMENDATORY 12 O.S. 1991, Section 1764, is amended to read as follows:

Section 1764. A fee of Thirty-five Dollars (\$35.00) shall be charged and collected for the filing of the affidavit for the commencement of any action for an amount of ~~One Thousand Five Hundred Dollars (\$1,500.00)~~ Four Thousand Five Hundred Dollars (\$4,500.00) or less. Any action in excess of ~~One Thousand Five Hundred Dollars (\$1,500.00)~~ Four Thousand Five Hundred Dollars (\$4,500.00) shall be subject to the filing fees provided in Title 28 of the Oklahoma Statutes for the same kind of action as filed in district court. For the filing of any counterclaim or setoff, a fee of Five Dollars (\$5.00) shall be charged and collected for the mailing of the copy of the affidavit and Five Dollars (\$5.00) for each notice mailed. Except as otherwise provided in Section 1772 of this title, no other fee or charge shall be collected by any officer for any service rendered pursuant to the provisions of the Small Claims Procedure Act, Section 1751 et seq. of this title, or for the taking of affidavits for use in connection with any action tried pursuant to the provisions of the Small Claims Procedure Act. If the affidavit and order are served by the sheriff or a licensed private process server, the court clerk shall collect the usual fee for the sheriff, which shall be taxed as costs in the case. The fee paid to a licensed private process server, as approved by the court, shall be taxed as additional costs in the case. After judgment, the court clerk shall issue such process and shall be entitled to collect only such fees and charges as are allowed by law for like services in other actions. All fees collected as authorized by this section and Section 1772 of this title shall be deposited with other fees that are collected by the district court. Any statute providing for an award of attorneys fees shall be applicable to the

small claims division if the attorney makes an appearance in the case, whether before or after judgment or on hearing for disclosure of assets.

SECTION 5. This act shall become effective November 1, 1995.

45-1-0414 KSM