ENROLLED HOUSE
BILL NO. 1778

By: Toure, Hastings and Vaughn of the House

and

Henry of the Senate

An Act relating to civil procedure; amending 12 O.S. 1991, Section 653, as last amended by Section 1, Chapter 343, O.S.L. 1994 (12 O.S. Supp. 1996, Section 653), which relates to time of application for a new trial; amending Sections 9 and 10, Chapter 351, O.S.L. 1993 and Section 11, Chapter 351, O.S.L. 1993, as amended by Section 1, Chapter 253, O.S.L. 1995 (12 O.S. Supp. 1996, Sections 696.2, 696.3 and 696.4), which relate to judgments, decrees, and appealable orders; amending 12 O.S. 1991, Section 698, as last amended by Section 2, Chapter 343, O.S.L. 1994 (12 O.S. Supp. 1996, Section 698), which relates to judgments notwithstanding verdict; amending Section 19, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1996, Section 990.2), which relates to post-trial motions; amending 12 O.S. 1991, Section 990A, as last amended by Section 5, Chapter 343, O.S.L. 1994 (12 O.S. Supp. 1996, Section 990A), which relates to appeals to the Supreme Court; amending 12 O.S. 1991, Section 993, as last amended by Section 1, Chapter 61, O.S.L. 1996 (12 O.S. Supp. 1996, Section 993), which relates to appeals from certain orders; amending 12 O.S. 1991, Section 1031.1, as last amended by Section 6, Chapter 343, O.S.L. 1994 (12 O.S. Supp. 1996, Section 1031.1), which relates to authorization to correct, open, modify or vacate judgments; providing time limits for filings if moving party did not prepare the judgment, decree, or appealable order and copy was not mailed to moving party as required by law; requiring mailing of file-stamped copy of judgments, decrees and appealable orders to all parties who are not in default for failure to appear in the action by preparing party or by person designated by the court; providing time for mailing; providing procedure for mailing; amending 12 O.S. 1991, Section 1761, as amended by Section 2, Chapter 357, O.S.L. 1992 (12 O.S. Supp. 1996, Section 1761), which relates to the Small Claims Procedure Act; requiring prevailing party to mail file-stamped copy of judgment to certain parties and file certificate of mailing; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 653, as last amended by Section 1, Chapter 343, O.S.L. 1994 (12 O.S. Supp. 1996, Section 653), is amended to read as follows:

Section 653. A. Unless unavoidably prevented, an application for a new trial, if made, must be filed not later than ten (10) days after the judgment, decree or appealable order prepared in conformance with Section 696.3 of this title has been filed, except:

1. In the case of newly discovered material evidence which the moving party could not, with reasonable diligence have discovered and produced at the trial; or

2. Impossibility of preparing a record for an appeal.

B. ~~Where the judgment, decree or appealable order states the matter was taken under advisement, the motion for new trial, if made, must be filed within ten (10) days from the date of mailing of a file-stamped copy of the judgment, decree or appealable order to the moving party, as indicated on the Certificate of Mailing~~ If the moving party did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the moving party, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the moving party within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the motion for new trial may be filed no later than ten (10) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order was mailed to the moving party.

C. A motion for new trial filed after the announcement of the decision on all issues in the case but before the filing of the judgment or decree shall be deemed filed immediately after the filing of the judgment or decree.

SECTION 2. AMENDATORY Section 9, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1996, Section 696.2), is amended to read as follows:

Section 696.2 A. After the granting of a judgment, decree or appealable order, it shall be reduced to writing in conformance with Section ~~10~~ 696.3 of this ~~act~~ title, signed by the court, and filed with the court clerk. The court may direct counsel for any party to the action to prepare a draft for the signature of the court, in which event, the court may prescribe procedures for the preparation and timely filing of the judgment, decree or appealable order, including, but not limited to, the time within which it is to be submitted to the court. If a written judgment, decree or appealable order is not submitted to the court by the party directed to do so within the time prescribed by the court, then any other party may reduce it to writing and submit it to the court.

B. ~~Where a matter is taken under advisement, the court shall state in the written judgment, decree or appealable order that the matter was taken under advisement. Promptly after the filing of such judgment, decree or appealable order, the court shall cause file-stamped copies of the judgment, decree or appealable order to be mailed to all parties who have entered an appearance or who have appeared in the action. The copies shall state the date of mailing. The person who mailed the copies of the judgment, decree or appealable order shall file a Certificate of Mailing showing to whom copies of the judgment, decree or appealable order were mailed, the addresses to which they were mailed, and the date of mailing~~ A file-stamped copy of every judgment, decree, or appealable order shall be mailed to all parties who are not in default for failure to appear in the action by the counsel for a party or party who prepared it,

or by a person designated by the trial court, promptly and no later than three (3) days after it is filed. The mailing shall be done in the manner provided in Section 2005 of Title 12 of the Oklahoma Statutes for the service of papers, and a certificate of service must be filed with the court clerk. If the judgment, decree or appealable order was prepared by the court, the court may direct a bailiff, court clerk or party to perform the mailing and certificate of service required by this subsection.

C. The filing with the court clerk of a written judgment, decree or appealable order, prepared in conformance with Section ~~10~~ 696.3 of this ~~act~~ title and signed by the court, shall be a jurisdictional prerequisite to the commencement of an appeal. The following shall not constitute a judgment, decree or appealable order: A minute entry; verdict; informal statement of the proceedings and relief awarded, including, but not limited to, a letter to a party or parties indicating the ruling or instructions for preparing the judgment, decree or appealable order.

D. A judgment, decree or appealable order, whether interlocutory or final, shall not be enforceable in whole or in part unless or until it is signed by the court and filed; except that the adjudication of any issue shall be enforceable when pronounced by the court in the following actions: divorce; separate maintenance; annulment; post-decree matrimonial proceedings; paternity; custody; adoption; termination of parental rights; mental health; guardianship; juvenile matters; habeas corpus proceedings; or proceedings for temporary restraining orders, temporary injunctions, permanent injunctions, conservatorship, probate proceedings, special executions in foreclosure actions, quiet title actions, partition proceedings or contempt citations. The time for appeal shall not begin to run until a written judgment, decree or appealable order, prepared in conformance with Section ~~10~~ 696.3 of this ~~act~~ title, is filed with the court clerk, regardless of whether the judgment, decree, or appealable order is effective when pronounced or when it is filed.

E. The preparation of orders, decisions and awards and the taking of appeals in workers' compensation cases shall be governed by the provisions of Title 85 of the Oklahoma Statutes.

SECTION 3. AMENDATORY Section 10, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1996, Section 696.3), is amended to read as follows:

Section 696.3 A. Judgments, decrees and appealable orders that are filed with the clerk of the court shall contain:

1. A caption setting forth the name of the court, the names and designation of the parties, the file number of the case and the title of the instrument;

2. A statement of the disposition of the action, proceeding or motion, including a statement of the relief awarded to a party or parties and the liabilities and obligations imposed on the other party or parties;

3. The signature and title of the court; and

4. Any other matter approved by the court.

B. Judgments, decrees and appealable orders that are filed with the clerk of the court may contain a statement of costs, attorney's fees and interest, or any of them, if they have been determined prior to the time the judgment, decree or appealable order is signed by the court in accordance with this section.

C. The clerk shall endorse on the judgment, decree or appealable order the date it was filed and the name and title of the clerk.

D. A file-stamped copy of the judgment, decree, or appealable order shall be mailed to all parties who are not in default for failure to appear in the action as provided in Section 696.2 of this title.

SECTION 4. AMENDATORY Section 11, Chapter 351, O.S.L. 1993, as amended by Section 1, Chapter 253, O.S.L. 1995 (12 O.S. Supp. 1996, Section 696.4), is amended to read as follows:

Section 696.4 A. A judgment, decree or appealable order may provide for costs, attorney's fees and interest or any of these items, but it need not include them. The preparation and filing of the judgment, decree or appealable order shall not be delayed pending the determination of these items. Such items may be determined by the court if a timely request is made, regardless of whether a petition in error has been filed.

B. If attorney's fees, costs or interest have not been included in the judgment, decree or appealable order, a party seeking any of these items must file an application with the court clerk along with the proof of service of the application on all affected parties in accordance with Section 2005 of this title. The application must set forth the amount requested and include information which supports that amount. The application must be filed within thirty (30) days after the filing of the judgment, decree or appealable order. If the ~~judgment, decree or appealable order shows that the matter was taken under advisement, the application must be filed within thirty (30) days after the date of mailing of copies of the judgment, decree or appealable order as shown by the Certificate of Mailing~~ party filing the application did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the party filing application, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the party filing the application within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the application may be filed no later than thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order was mailed to the party filing the application. For good cause shown, the court may extend the time for filing the application upon motion filed within the time that the application could be filed. Within fifteen (15) days after the application is filed with the court, any party may file written objections to it, with a copy to the moving party.

C. An application for attorney's fees for services performed on appeal shall be made to the appellate court either in the applicant's brief on appeal or by separate motion filed any time before issuance of mandate. If in the brief, the application shall be made in a separate portion that is specifically identified. The application shall cite authority for awarding attorney's fees but shall not include evidentiary material concerning their amount. The appellate court shall decide whether to award attorney's fees for services on appeal, and if fees are awarded, it shall remand the case to the trial court for a determination of their amount. The trial court's order determining the amount of fees is an appealable order.

SECTION 5. AMENDATORY 12 O.S. 1991, Section 698, as last amended by Section 2, Chapter 343, O.S.L. 1994 (12 O.S. Supp. 1996, Section 698), is amended to read as follows:

Section 698. When a motion for a directed verdict made at the close of all of the evidence should have been granted, the court shall, at the request of the moving party, grant judgment in the

moving party's favor, although a verdict has been found against the moving party, but the court may order a new trial where it appears that the other party was prevented from proving a claim or defense by mistake, accident or surprise. The motion for judgment notwithstanding the verdict, if made, must be filed not later than ten (10) days after the judgment, prepared in conformance with Section 696.3 of this title, is filed with the court clerk. A motion for judgment notwithstanding the verdict may be joined with a motion for a new trial. ~~Where the judgment states the matter was taken under advisement, the motion for judgment notwithstanding the verdict, if made, must be filed within ten (10) days from the date of mailing of a file-stamped copy of the judgment to the moving party, as indicated on the Certificate of Mailing~~ If the moving party did not prepare the judgment, and Section 696.2 of this title required a copy of the judgment to be mailed to the moving party, and the court records do not reflect the mailing of a copy of the judgment to the moving party within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, the motion for judgment notwithstanding the verdict may be filed no later than ten (10) days after the earliest date on which the court records show that a copy of the judgment was mailed to the moving party. A motion for judgment notwithstanding the verdict filed after the announcement of the verdict but before the filing of the judgment shall be deemed filed immediately after the filing of the judgment or decree.

SECTION 6. AMENDATORY Section 19, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1996, Section 990.2), is amended to read as follows:

Section 990.2 A. Post-Trial Motions Filed Within Ten (10) Days. ~~Where~~ When a post-trial motion for a new trial, for judgment notwithstanding the verdict, or to correct, open, modify, vacate or reconsider a judgment, decree or final order, other than a motion involving costs, attorney's fees or interest, is filed within ten (10) days after the judgment, decree or final order is filed with the court clerk, an appeal shall not be commenced until an order disposing of the motion is filed with the court clerk. The unsuccessful party may then appeal from the order disposing of the motion within thirty (30) days after the date such order was filed. If the decision on the motion was against the moving party, the moving party may appeal from the judgment, decree or final order, from the ruling on the motion, or from both, in one appeal, within thirty (30) days after the filing of the order disposing of the motion. Successive appeals from the original judgment, decree or final order and the order disposing of the motion shall not be allowed.

B. Post-Trial Motions Filed After Ten (10) Days. The time to appeal from a judgment, decree or final order is not extended or affected by the filing of a motion to correct, open, modify, vacate or reconsider the judgment, decree or final order that is filed more than ten (10) days after the judgment, decree or final order is filed with the clerk of the trial court, and an appeal that is commenced before such a motion is filed is not premature. If the motion is filed after a petition in error is filed, the moving party shall advise the Supreme Court the motion was filed. If a petition in error is filed after such a motion is filed, the appellant shall advise the Supreme Court in the petition in error that the motion is pending. When the trial court disposes of the motion where a petition in error has been filed, the successful party shall advise the Supreme Court of the action taken on the motion.

C. ~~Matters Taken Under Advisement. If a judgment, decree or final order has been taken under advisement, all times referred to in this section shall run from the date of mailing of a file-stamped copy of the judgment, decree or final order to the appealing party, as indicated on the Certificate of Mailing, rather than from the date of filing~~ If the appellant did not prepare the judgment, decree, or final order, and Section 696.2 of this title required a copy of the judgment, decree, or final order to be mailed to the appellant, and the court records do not reflect the mailing of a copy of the judgment, decree, or final order to the appellant within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or final order, all times referred to in this section shall run from the earliest date on which the court records show that a file-stamped copy of the judgment, decree, or final order was mailed to the appealing party, rather than from the date of filing.

D. Costs, Attorney's Fees and Interest. The filing of a motion for costs, attorney's fees or interest shall not extend or affect the time to appeal.

SECTION 7. AMENDATORY 12 O.S. 1991, Section 990A, as last amended by Section 5, Chapter 343, O.S.L. 1994 (12 O.S. Supp. 1996, Section 990A), is amended to read as follows:

Section 990A. A. An appeal to the Supreme Court of Oklahoma, if taken, must be commenced by filing a petition in error with the Clerk of the Supreme Court of Oklahoma within thirty (30) days from the date a judgment, decree, or appealable order prepared in conformance with Section 696.3 of this title is filed with the clerk of the trial court. ~~Where such judgment, decree, or appealable order states the matter was taken under advisement, the petition in error, if filed, must be filed within thirty (30) days from the date of mailing of a file-stamped copy of such judgment, decree, or appealable order to the appealing party, as indicated on the Certificate of Mailing~~ If the appellant did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the appellant, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the appellant within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the petition in error may be filed within thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order was mailed to the appellant.

B. The filing of the petition in error may be accomplished either by delivery or by certified mail with return receipt requested to the Clerk of the Supreme Court. The date of filing or the date of mailing, as shown by the postmark affixed by the post office or other proof from the post office of the date of mailing, shall constitute the date of filing of the petition in error. If there is no proof from the post office of the date of mailing, the date of receipt by the Clerk of the Supreme Court shall constitute the date of filing of the petition in error.

C. The Supreme Court shall provide by rule, which shall have the force of statute, and be in furtherance of this method of appeal:

1. For the filing of cross-appeals;

2. The procedure to be followed by the trial courts or tribunals in the preparation and authentication of transcripts and records in cases appealed under this act; and

3. The procedure to be followed for the completion and submission of the appeal taken hereunder.

D. In all cases the record on appeal shall be complete and ready for filing in the Supreme Court within the time prescribed by rule.

E. Except for the filing of a petition in error as provided herein, all steps in perfecting an appeal are not jurisdictional.

F. 1. If a petition in error is filed before the time prescribed in this section, it shall be dismissed as premature; however, if the time to commence the appeal accrues before the appeal is dismissed, the appellant may file a supplemental petition in error, without the payment of any additional costs. Such supplemental petition in error shall state when the time for commencing the appeal began and shall set out all matters which have occurred since the filing of the original petition in error and which should be included in a timely petition in error. When a proper supplemental petition in error is filed, the appeal shall not be dismissed on the ground that it was premature.

2. If an appeal is dismissed on the ground that it was premature, the appellant may file a new petition in error within the time prescribed in this section for filing petitions in error or within thirty (30) days after notice is mailed to the parties which states that the appeal was dismissed on the ground that it was premature, whichever date is later. A notice that an appeal was dismissed on the ground that it was premature shall include the date of mailing and the ground for dismissal.

G. 1. No designation of record shall be accepted by the district court clerk for filing unless it contains one of the following:

a. where a transcript is designated: A signed acknowledgment from the court reporter who reported evidence in the case indicating receipt of the request for transcript, the date received, and the amount of deposit received, if applicable, in substantially the following form: I, _____, court reporter for the above styled case, do hereby acknowledge this request for transcript on this ____ day of____, 19__, and have received a deposit in the sum of $____. , or

b. where a transcript is not designated: A signed statement by the attorney preparing the designation of record stating that a transcript has not been ordered and a brief explanation why, in substantially the following form: I, _____, attorney for the appellant, hereby state that I have not ordered a transcript because:

(1) a transcript is not necessary for this appeal, or

(2) no stenographic reporting was made.

2. This section shall not apply to counter-designations of record filed by appellees.

SECTION 8. AMENDATORY 12 O.S. 1991, Section 993, as last amended by Section 1, Chapter 61, O.S.L. 1996 (12 O.S. Supp. 1996, Section 993), is amended to read as follows:

Section 993. A. When an order:

1. Discharges, vacates, or modifies or refuses to discharge, vacate, or modify an attachment;

2. Denies a temporary or permanent injunction, grants a temporary or permanent injunction except where granted at an ex parte hearing, or discharges, vacates, or modifies or refuses to discharge, vacate, or modify a temporary or permanent injunction;

3. Discharges, vacates, or modifies or refuses to discharge, vacate, or modify a provisional remedy which affects the substantial rights of a party;

4. Appoints a receiver except where the receiver was appointed at an ex parte hearing, refuses to appoint a receiver, or vacates or refuses to vacate the appointment of a receiver;

5. Directs the payment of money pendente lite except where granted at an ex parte hearing, refuses to direct the payment of money pendente lite, or vacates or refuses to vacate an order directing the payment of money pendente lite;

6. Certifies or refuses to certify an action to be maintained as a class action; or

7. Grants a new trial or opens or vacates a judgment or order, the party aggrieved thereby may appeal the order to the Supreme Court without awaiting the final determination in said cause, by filing the petition in error and the record on appeal with the Supreme Court within thirty (30) days after the order prepared in conformance with Section 696.3 of this title, is filed with the court clerk. ~~Where the order states the matter was taken under advisement, the petition in error, if filed, must be filed within thirty (30) days from the date of mailing of a file-stamped copy of the order to the appealing party, as indicated on the Certificate of Mailing~~ If the appellant did not prepare the order, and Section 696.2 of this title required a copy of the order to be mailed to the appellant, and the court records do not reflect the mailing of a copy of the order to the appellant within three (3) days, exclusive of weekends and holidays, after the filing of the order, the petition in error may be filed within thirty (30) days after the earliest date on which the court records show that a copy of the order was mailed to the appellant. The Supreme Court may extend the time for filing the record upon good cause shown.

B. If the order discharges or modifies an attachment or temporary injunction and it becomes operative, the undertaking given upon the allowance of an attachment or temporary injunction shall stay the enforcement of said order and remain in full force until final order of discharge shall take effect.

C. Where a receiver shall be or has been appointed, upon the appellant filing an appeal bond, with sufficient sureties, in such sum as may have been required of the receiver by the court or a judge thereof, conditioned for the due prosecution of the appeal and the payment of all costs or damages that may accrue to the state or any officer or person by reason thereof, the authority of the receiver shall be suspended until the final determination of the appeal, and if the receiver has taken possession of any property, real or personal, it shall be returned and surrendered to the appellant upon the filing and approval of the bonds.

SECTION 9. AMENDATORY 12 O.S. 1991, Section 1031.1, as last amended by Section 6, Chapter 343, O.S.L. 1994 (12 O.S. Supp. 1996, Section 1031.1), is amended to read as follows:

Section 1031.1 A. A court may correct, open, modify or vacate a judgment, decree or appealable order on its own initiative not later than thirty (30) days after the judgment, decree or appealable order prepared in conformance with Section 696.3 of this title has been filed with the court clerk. Notice of the court's action shall be given as directed by the court to all affected parties.

B. On motion of a party made not later than thirty (30) days after a judgment, decree or appealable order prepared in conformance with Section 696.3 of this title has been filed with the court clerk, the court may correct, open, modify or vacate the judgment, decree or appealable order. ~~Where the judgment, decree or~~

~~appealable order states the matter was taken under advisement, the motion to correct, open, modify, or vacate the judgment, decree or appealable order, if made, must be filed within thirty (30) days from the date of mailing of a file-stamped copy of the judgment, decree or appealable order to the moving party~~ If the moving party did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the moving party, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the moving party within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the motion to correct, open, modify, or vacate the judgment, decree or appealable order may be filed no later than thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order was mailed to the moving party. The moving party shall give notice to all affected parties. A motion to correct, open, modify or vacate a judgment or decree filed after the announcement of the decision on all issues in the case but before the filing of the judgment or decree shall be deemed filed immediately after the filing of the judgment or decree.

SECTION 10. AMENDATORY 12 O.S. 1991, Section 1761, as amended by Section 2, Chapter 357, O.S.L. 1992 (12 O.S. Supp. 1996, 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); 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) 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.

The prevailing party shall mail a file-stamped copy of the judgment by first-class mail to all other parties who have entered an appearance in the action at their last-known addresses and file a certificate of mailing with the court clerk.

SECTION 11. This act shall become effective May 1, 1997.

SECTION 12. 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.

Passed the House of Representatives the 11th day of March, 1997.

Speaker of the House of Representatives

Passed the Senate the 8th day of April, 1997.

President of the Senate