ENGROSSED SENATE
BILL NO. 1332

By: Smith of the Senate

and

Braddock of the House

An Act relating to debtors and creditors; amending 12 O.S. 1991, Sections 801, 1753, 1756, 2006, as last amended by Section 20, Chapter 293, O.S.L. 1999 and 2012 (12 O.S. Supp. 1999, Section 2006), which relate to judgment liens, small claims, and the Oklahoma Pleading Code; deleting language relating to life of judgment lien on realty; updating and modifying form of small claims affidavit; increasing time for appearance of defendant in small claims action; modifying method for computation of time in certain cases; clarifying language; modifying time for service of certain answer; amending 43 O.S. 1991, Section 208, which relates to liabilities of husbands and wives; modifying liability for debts of spouse; providing for joint liability of spouses for necessaries; limiting liability of abandoned spouse and spouses living separately by agreement under certain circumstances; repealing 43 O.S. 1991, Sections 209 and 210, which relate to liability for necessaries of spouse and liability upon abandonment or separation of spouses; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 801, is amended to read as follows:

Section 801. ~~No judgment heretofore rendered, or which hereafter may be rendered, on which execution shall not have been taken out and levied before the expiration of one (1) year next after its rendition, shall operate as a lien on the estate on any debtor, to the prejudice of any other judgment creditor. But in all cases where judgment has been or may be rendered in the Supreme Court, and a special mandate awarded to the district court to carry the same into execution, the lien of the judgment creditor shall continue for one (1) year after the first day of the term of the district court to which such mandate may be directed. Nothing in~~

~~this section contained shall be construed to defeat the lien of any judgment creditor who shall fail to take out execution and cause a levy to be made, as herein provided, when such failure shall be occasioned by appeal, proceedings in error, injunction, or by vacancy in the office of sheriff, or the disability of such officer, until one (1) year after such disability shall be removed.~~ In all cases where real estate has been or may hereafter be taken on execution and appraised and twice advertised and offered for sale, and shall remain unsold for the want of bidders it shall be the duty of the court from which such execution issued, on motion of the plaintiff, to set aside such appraisement and order a new one to be made, or to set aside such levy and appraisement and award a new execution to issue, as the case may require.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 1753, is amended to read as follows:

Section 1753. A. Actions under the small claims procedure as described in paragraphs A and B of Section 1751 of this title shall be initiated by plaintiff or ~~his~~ plaintiff's attorney filing an affidavit in substantially the following form with the clerk of the court:

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

_____

Plaintiff

vs. Small Claims No. _____

_____

Defendant

STATE OF OKLAHOMA)

) ss

COUNTY OF _____)

_____, being duly sworn, deposes and says:

That the defendant resides at _____, in the above-named county, and that the mailing address of the defendant is _____. That the defendant is indebted to the plaintiff in the sum of $_____ for _____, that plaintiff has demanded payment of ~~said~~ the sum, but the defendant refused to pay the same and no part of the amount sued for has been paid,

or

That the defendant is wrongfully in possession of certain personal property described as _____

_____

that the value of ~~said~~ the personal property is $_____, that plaintiff is entitled to possession thereof and has demanded that defendant relinquish possession of ~~said~~ the personal property, but that defendant wholly refuses to do so.

_____

____

Subscribed and sworn to before me this _____ day of _____, ~~19__~~ 20__.

_____

Notary Public (or Clerk or Judge)

My Commission Expires:

_____

On the affidavit shall be printed:

ORDER

The people of the State of Oklahoma, to the within-named defendant:

You are hereby directed to appear and answer the foregoing claim and to have with you all books, papers, and witnesses needed by you to establish your defense to ~~said~~ the claim.

This matter shall be heard at _____ (name or address of building), in _____, County of _____,

State of Oklahoma, at the hour of _____ o'clock of the _____ day of _____, ~~19__, or at the same time and place seven (7) days after service hereof, whichever is the latter~~ 20__. And you are further notified that in case you do not so appear judgment will be given against you as follows:

For the amount of ~~said~~ the claim as it is stated in ~~said~~ the affidavit, or for possession of the personal property described in ~~said~~ the affidavit.

And, in addition, for costs of the action (including attorney fees where provided by law), including costs of service of the order.

Dated this _____ day of _____, ~~19__~~ 20__.

_____

Clerk of the Court (or Judge)

B. Actions under the small claims procedure as described in paragraph C of Section 1751 of this title shall be initiated by plaintiff or ~~his~~ plaintiff's attorney filing an affidavit in substantially the following form with the clerk of the court:

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

_____

Plaintiff

vs.

_____ Small Claims No._____

Defendant

_____

Defendant

STATE OF OKLAHOMA)

) ss.

COUNTY OF_____)

_____, being duly sworn, deposes and says:

That, _____, the defendant resides at _____, in the above-named county, and that the mailing address of the defendant is _____.

That, _____, the defendant resides at _____, in the above-named county, and that the mailing address of the defendant is _____.

That the plaintiff has custody or possession of money in the amount or value of $_____, held pursuant to the following:

_____

_____.

That the defendants claim or may claim to be entitled to ~~such~~ the money.

That the plaintiff deposits herewith into the court $_____, which equals the amount of ~~such~~ the money to be invested in accordance with the order of the court and that the plaintiff will abide with the judgment of the court as to the final disposition thereof.

Subscribed and sworn to before me this __ day of ____, ~~19____~~ 20__.

_____

Notary Public (or Clerk or Judge)

My Commission Expires:

_____

On the affidavit shall be printed:

ORDER

The people of the State of Oklahoma, to each of the within-named defendants:

You are hereby directed to appear and answer the foregoing claim and to have with you all books, papers, and witnesses needed by you to establish your claim to ~~such~~ the money.

This matter shall be heard at _____ (name or address of building), in _____, County of _____, State of Oklahoma,

at the hour of _____ o'clock of the _____ day of _____, ~~19____, or at the same time and place seven (7) days after service hereof, whichever is the latter~~ 20__. And you are further notified that in case you do not so appear judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described money as well as the disposition thereof.

And, in addition, for costs of the action, including attorney fees where provided by law, and including costs of service of the order.

Dated this _____ day of _____, ~~19____~~ 20__.

_____

Clerk of the Court (or Judge)

SECTION 3. AMENDATORY 12 O.S. 1991, Section 1756, is amended to read as follows:

Section 1756. The date for the appearance of the defendant as provided in the order endorsed on the affidavit shall not be more than ~~thirty (30)~~ forty (40) days nor less than ten (10) days from the date of ~~said~~ the order. The order shall be served upon the defendant at least seven (7) days prior to the date specified in ~~said~~ the order for the appearance of the defendant. If it is not served upon the defendant, the plaintiff ~~must~~ shall apply to the clerk for a new order setting a new day for the appearance of the defendant, which shall not be more than ~~thirty (30)~~ forty (40) days nor less than ten (10) days from the date of the issuance of the new order. When the clerk has fixed the date for appearance of the defendant, ~~he~~ the clerk shall inform the plaintiff, either in person or by certified mail, of ~~said~~ the date and order the plaintiff to appear on ~~said~~ that date.

SECTION 4. AMENDATORY 12 O.S. 1991, Section 2006, as last amended by Section 20, Chapter 293, O.S.L. 1999 (12 O.S. Supp. 1999, Section 2006), is amended to read as follows:

Section 2006.

TIME

A. COMPUTATION. In computing any period of time prescribed or allowed by this title, by the rules of any court, by order of the court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes or any other day when the office of the court clerk does not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes or any other day when the office of the court clerk does not remain open for public business until 4:00 p.m. ~~When~~ Except for the times provided in Sections 990.3, 1148.4, and 1756 of this title, when the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays as defined by the Oklahoma Statutes or any other day when the office of the court clerk does not remain open for public business until 4:00 p.m., shall be excluded in the computation.

B. ENLARGEMENT. When by this title or by a notice given thereunder by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion:

1. With or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

2. Upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time set forth in this title for taking an appeal from a judgment, decree or appealable order, or for seeking a new trial, a judgment

notwithstanding the verdict, or to correct, open, modify, vacate or reconsider a judgment, decree, or appealable order, except as provided in the sections governing such proceedings.

C. FOR MOTIONS - AFFIDAVITS. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof, shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by the Oklahoma Statutes, court rules, or by an order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion.

D. ADDITIONAL TIME AFTER SERVICE BY MAIL. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon ~~him~~ the party and the notice or paper is served upon ~~him~~ the party by mail, three (3) days shall be added to the prescribed period~~. Provided~~; provided, however, when a summons and petition are served by mail, a defendant shall serve ~~his~~ an answer within twenty (20) days or thirty-five (35) days, pursuant to subsection A of Section 2012 of this title, after the date of receipt or if refused, the date of refusal of the summons and petition by the defendant.

SECTION 5. AMENDATORY 12 O.S. 1991, Section 2012, is amended to read as follows:

Section 2012.

DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED; BY PLEADING OR MOTION

A. WHEN PRESENTED. A defendant shall serve ~~his~~ an answer within twenty (20) days after the service of the summons and petition upon ~~him~~ the defendant, except as otherwise provided by the law of this state. Within twenty (20) days, or thirty-five (35) days, when applicable, after the service of the summons and petition

upon ~~him~~ the defendant, a defendant may file an appearance which shall extend the time to respond twenty (20) days from the last date for answering. The filing of such ~~an~~ appearance waives defenses of paragraphs 2, 3, 4, 5, 6, and 9 of subsection B of this section. A party served with a pleading stating a cross-claim against ~~him~~ the party shall serve an answer thereto within twenty (20) days after the service upon ~~him~~ the party. The plaintiff shall serve ~~his~~ a reply to a counterclaim in the answer within twenty (20) days after service of the answer or, if a reply is ordered by the court, within twenty (20) days after service of the order, unless the order otherwise directs. The party requesting a summons to be issued or filing a counter-claim or cross-claim may elect to have the answer served within thirty-five (35) days in lieu of the twenty (20) days set forth in this section. The service of a motion permitted under this section or a motion for summary judgment alters these periods of time as follows, unless a different time is fixed by order of the court: if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within twenty (20) days after notice of the court's action.

B. HOW PRESENTED. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

1. Lack of jurisdiction over the subject matter;

2. Lack of jurisdiction over the person;

3. Improper venue;

4. Insufficiency of process;

5. Insufficiency of service of process;

6. Failure to state a claim upon which relief can be granted;

7. Failure to join a party under Section ~~19~~ 2019 of this ~~act~~ title;

8. Another action pending between the same parties for the same claim;

9. Lack of capacity of a party to be sued; and

10. Lack of capacity of a party to sue.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, ~~he~~ the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered 6 of this subsection to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and all parties shall be given reasonable opportunity to present all material made pertinent to ~~such a~~ the motion by the rules for summary judgment. A motion to dismiss for failure to state a claim upon which relief can be granted shall separately state each omission or defect in the petition, and a motion that does not specify such defects or omissions shall be denied without a hearing and the defendant shall answer within twenty (20) days after notice of the court's action.

C. PRELIMINARY HEARINGS. The defenses specifically enumerated in paragraphs 1 through 10 of subsection B of this section, whether made in a pleading or by motion, and the motion to strike mentioned in subsection D of this section shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial. If the court determines that venue is proper, the action shall not be

dismissed for improper venue as a result of the jury's verdict or the subsequent ruling of the court on a demurrer to the evidence or a motion for a directed verdict.

D. MOTION TO STRIKE. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by this act, upon motion made by a party within twenty (20) days after the service of the pleading upon ~~him~~ the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense. If, on a motion to strike an insufficient defense, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for partial summary judgment and all parties shall be given reasonable opportunity to present all materials made pertinent to ~~such a~~ the motion by the rules for summary judgment.

E. CONSOLIDATION OF DEFENSES IN MOTION. A party who makes a motion under this section may join with it any other motions herein provided for and then available to ~~him~~ the party. If a party makes a motion under this section but omits therefrom any defense or objection then available to ~~him~~ the party which this section permits to be raised by motion, ~~he~~ the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in paragraph 2 of subsection F of this section on the grounds there stated. The court in its discretion may permit a party to amend ~~his~~ a motion by stating additional defenses or objections if ~~such~~ an amendment is sought at least five (5) days before the hearing on the motion.

F. WAIVER OR PRESERVATION OF CERTAIN DEFENSES.

1. A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief can be granted, or lack of capacity of a party to be sued is waived:

a. if omitted from a motion that raises any of the defenses or objections which this section permits to be raised by motion, or

b. if it is not made by motion and it is not included in a responsive pleading or an amendment thereof permitted by subsection A of Section ~~15~~ 2015 of this ~~act~~ title to be made as a matter of course. A motion to strike an insufficient defense is waived if not raised as in subsection D of this section.

2. A defense of failure to join a party indispensable under Section ~~19~~ 2019 of this ~~act~~ title may be made in any pleading permitted or ordered under subsection A of Section ~~7~~ 2007 of this ~~act~~ title or at the trial on the merits. A defense of another action pending between the same parties for the same claim or a defense of lack of capacity of a party to sue may be made in any pleading permitted or ordered pursuant to the provisions of subsection A of Section ~~7~~ 2007 of this ~~act~~ title or at the pretrial conference.

3. Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

G. FINAL DISMISSAL ON FAILURE TO AMEND. On granting a motion to dismiss a claim for relief, the court shall grant leave to amend if the defect can be remedied and shall specify the time within which an amended pleading shall be filed. If the amended pleading is not filed within the time allowed, final judgment of dismissal with prejudice shall be entered on motion except in cases of excusable neglect. In such cases amendment shall be made by the party in default within a time specified by the court for filing an amended pleading. Within the time allowed by the court for filing an amended pleading, a plaintiff may voluntarily dismiss the action without prejudice.

SECTION 6. AMENDATORY 43 O.S. 1991, Section 208, is amended to read as follows:

Section 208. ~~1.~~ A. Neither husband nor wife, as such, is answerable for the acts of the other.

~~2.~~ B. The separate property of the husband is liable for the debts of the husband contracted before or after marriage, but is not liable for the debts of the wife contracted before the marriage.

~~3.~~ C. The separate property of the wife is liable for the debts of the wife contracted before or after marriage, but is not liable for the debts of ~~her~~ the husband~~, but is liable for her own debts,~~ contracted before ~~or after~~ the marriage.

~~4.~~ D. No estate is allowed the husband as tenant by curtesy, upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 209.1 of Title 43, unless there is created a duplication in numbering, reads as follows:

Husband and wife shall be jointly and severally liable for debts incurred on account of necessaries furnished to either spouse unless otherwise provided by law or court order.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 210.1 of Title 43, unless there is created a duplication in numbering, reads as follows:

An abandoned spouse shall not be liable for the support of or necessaries for the abandoning spouse unless the abandonment is justified by misconduct of the abandoned spouse or as otherwise provided by law or order of a court. Unless otherwise agreed by both spouses, neither spouse shall be liable for the support of nor necessaries for the other spouse when the spouses are living separately by agreement for a period longer than thirty (30) days.

SECTION 9. REPEALER 43 O.S. 1991, Sections 209 and 210, are hereby repealed.

SECTION 10. This act shall become effective November 1, 2000.

Passed the Senate the 6th day of March, 2000.

_____
President of the Senate

Passed the House of Representatives the ____ day of _____, 2000.

_____
Speaker of the House of Representatives