

ENROLLED 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, and 2012, 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; clarifying language; modifying time for service of certain answer; amending 15 O.S. 1991, Section 805, which relates to hearings before arbitrators; providing for legislative continuances of arbitration hearings; 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 necessities; repealing 43 O.S. 1991, Section 209, which relates to liability for necessities of spouse; providing for codification; 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 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 appraisalment and order a new one to be made, or to set aside such levy and appraisalment 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.

Defendant

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 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)~~ sixty (60) 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)~~ sixty (60) 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 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 5. AMENDATORY 15 O.S. 1991, Section 805, is amended to read as follows:

Section 805. Unless otherwise provided by the agreement or this act:

1. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this act.

2. a. The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five (5) days before the hearing. Appearance at the hearing waives such notice. The arbitrators may

adjourn the hearing from time to time as necessary.
On

b. The arbitrators shall postpone the hearing to a time not later than the date fixed by the agreement for making the award, unless the parties consent to a later date, upon any of the following:

(1) request of a party and for good cause, ~~or upon~~

(2) their own motion, ~~the arbitrators may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The,~~
or

(3) request of a party if the party or the party's attorney is a member of the Oklahoma Legislature when the Legislature is in session or if the party or the party's attorney is a member of the Oklahoma Senate when the Senate is sitting as a court of impeachment.

c. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear.

d. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

3. The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

4. The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

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 necessities furnished to either spouse unless otherwise provided by law or court order.

SECTION 8. REPEALER 43 O.S. 1991, Section 209, is hereby repealed.

SECTION 9. This act shall become effective November 1, 2000.

SECTION 10. 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 Senate the 25th day of May, 2000.

President of the Senate

Passed the House of Representatives the 26th day of May, 2000.

Speaker of the House of Representatives

