

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 1286

By: Ellis

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5
6 AS INTRODUCED

7 An Act relating to civil procedure; amending 12 O.S.
8 2001, Sections 1751, as last amended by Section 1,
9 Chapter 70, O.S.L. 2004, and 1759, as amended by
10 Section 1, Chapter 122, O.S.L. 2005 (12 O.S. Supp.
11 2009, Sections 1751 and 1759), which relate to small
12 claims procedure; expanding actions eligible for
13 small claims docket; requiring certain disclaimer;
14 increasing amount of claim for transfer of certain
15 cases; and providing an effective date.

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

17 SECTION 1. AMENDATORY 12 O.S. 2001, Section 1751, as
18 last amended by Section 1, Chapter 70, O.S.L. 2004 (12 O.S. Supp.
19 2009, Section 1751), is amended to read as follows:

20 Section 1751. A. The following suits may be brought under the
21 small claims procedure:

22 1. Actions for the recovery of money based on contract or tort,
23 including subrogation claims, but excluding libel or slander, in
24 which the amount sought to be recovered, exclusive of attorneys fees
and other court costs, does not exceed ~~Six Thousand Dollars~~
~~(\$6,000.00)~~ Ten Thousand Dollars (\$10,000.00);

1 2. Actions to replevy personal property the value of which does
2 not exceed ~~Six Thousand Dollars (\$6,000.00)~~ Ten Thousand Dollars
3 (\$10,000.00). If the claims for possession of personal property and
4 to recover money are pled in the alternative, the joinder of claims
5 is permissible if neither the value of the property nor the total
6 amount of money sought to be recovered, exclusive of attorneys fees
7 and other costs, exceeds ~~Six Thousand Dollars (\$6,000.00)~~ Ten
8 Thousand Dollars (\$10,000.00); and

9 3. Actions in the nature of interpleader, as provided for in
10 Section 2022 of this title, in which the value of the money which is
11 the subject of such action does not exceed ~~Six Thousand Dollars~~
12 ~~(\$6,000.00)~~ Ten Thousand Dollars (\$10,000.00).

13 B. No action may be brought under the small claims procedure by
14 any collection agency, collection agent, or assignee of a claim,
15 except that an action may be brought against an insurer or third-
16 party administrator by a health care provider as that term is
17 defined in Section 6552 of Title 36 of the Oklahoma Statutes, who is
18 an assignee of benefits available under an accident and health
19 insurance policy, trust, plan, or contract.

20 C. In those cases which are uncontested, the amount of
21 attorneys fees allowed shall not exceed ten percent (10%) of the
22 judgment.

23 D. No action may be brought under the small claims procedure
24 for any alleged claim against any city, county or state agency, or

1 employee of a city, county or state agency, if the claim alleges
2 matters arising from incarceration, probation, parole or community
3 supervision.

4 E. No action by a plaintiff who is currently incarcerated in
5 any jail or prison in the state may be brought against any person or
6 entity under the small claims procedure.

7 F. A small claims affidavit shall include a statement
8 acknowledging that the plaintiff is disclaiming a right to a trial
9 by jury on the merits of the case.

10 SECTION 2. AMENDATORY 12 O.S. 2001, Section 1759, as
11 amended by Section 1, Chapter 122, O.S.L. 2005 (12 O.S. Supp. 2009,
12 Section 1759), is amended to read as follows:

13 Section 1759. A. Except as provided by subsection C of this
14 section, if a claim, a counterclaim, or a setoff is filed, prior to
15 the expiration of the time prescribed by Section 1758 of this title,
16 for an amount in excess of ~~Six Thousand Dollars (\$6,000.00)~~ Ten
17 Thousand Dollars (\$10,000.00), the action shall be transferred to
18 another docket of the district court unless both parties agree in
19 writing and file said agreement with the papers in the action that
20 said claim, counterclaim, or setoff shall be tried under the small
21 claims procedure. If such an agreement has not been filed, a
22 judgment in excess of ~~Six Thousand Dollars (\$6,000.00)~~ Ten Thousand
23 Dollars (\$10,000.00) may not be enforced for the part that exceeds
24 ~~Six Thousand Dollars (\$6,000.00)~~ Ten Thousand Dollars (\$10,000.00).

1 If the action is transferred to another docket of the district
2 court, the person whose claim exceeded ~~Six Thousand Dollars~~
3 ~~(\$6,000.00)~~ Ten Thousand Dollars (\$10,000.00) shall deposit with the
4 clerk the court costs that are charged in other cases, less any sums
5 that have been already paid to the clerk, or the claim shall be
6 dismissed and the remaining claims, if any, shall proceed under the
7 small claims procedure.

8 B. If the action is transferred to another docket of the
9 district court, the plaintiff shall file a petition that conforms to
10 the standards for pleadings prescribed by the Oklahoma Pleading
11 Code, Section 2001 et seq. of this title, within twenty (20) days
12 from the timely filing of the claim, counterclaim, or setoff. The
13 answer of the defendant shall be due within twenty (20) days after
14 the filing of the petition and the reply of the plaintiff shall be
15 due within ten (10) days after the answer is filed.

16 C. Except as provided by Section 1757 of this title, if a
17 defendant does not file a counterclaim within the period prescribed
18 by Section 1758 of this title, the action shall not be transferred
19 to another docket of the district court.

20 SECTION 3. This act shall become effective November 1, 2010.

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