

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 814

By: Ivester

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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, 1757, and 1759, as amended
10 by Section 1, Chapter 122, O.S.L. 2005 (12 O.S. Supp.
11 2008, Sections 1751 and 1759), which relate to small
12 claims procedure; expanding actions eligible for
13 small claims docket; increasing allowable amount of
14 certain fees; requiring certain disclaimer; modifying
15 certain time period; increasing amount of claim for
16 transfer of certain cases; and providing an effective
17 date.

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

19 SECTION 1. AMENDATORY 12 O.S. 2001, Section 1751, as
20 last amended by Section 1, Chapter 70, O.S.L. 2004 (12 O.S. Supp.
21 2008, Section 1751), is amended to read as follows:

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

24 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

1 and other court costs, does not exceed ~~Six Thousand Dollars~~
2 ~~(\$6,000.00)~~ Twenty Thousand Dollars (\$20,000.00);

3 2. Actions to replevy personal property the value of which does
4 not exceed ~~Six Thousand Dollars (\$6,000.00)~~ Twenty Thousand Dollars
5 (\$20,000.00). If the claims for possession of personal property and
6 to recover money are pled in the alternative, the joinder of claims
7 is permissible if neither the value of the property nor the total
8 amount of money sought to be recovered, exclusive of attorneys fees
9 and other costs, exceeds ~~Six Thousand Dollars (\$6,000.00)~~ Twenty
10 Thousand Dollars (\$20,000.00); and

11 3. Actions in the nature of interpleader, as provided for in
12 Section 2022 of this title, in which the value of the money which is
13 the subject of such action does not exceed ~~Six Thousand Dollars~~
14 ~~(\$6,000.00)~~ Twenty Thousand Dollars (\$20,000.00).

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

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

1 D. No action may be brought under the small claims procedure
2 for any alleged claim against any city, county or state agency, or
3 employee of a city, county or state agency, if the claim alleges
4 matters arising from incarceration, probation, parole or community
5 supervision.

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

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

12 SECTION 2. AMENDATORY 12 O.S. 2001, Section 1757, is
13 amended to read as follows:

14 Section 1757. A. On motion of the defendant, a small claims
15 action may, in the discretion of the court, be transferred from the
16 small claims docket to another docket of the court; provided, that
17 the motion is filed and notice is given by the defendant to the
18 opposing party or parties by mailing a copy of the motion within
19 four (4) days after service on the defendant or at least forty-eight
20 (48) hours prior to the time fixed in the order for defendant to
21 appear or answer, whichever is earlier; and provided further, that
22 the defendant deposit the sum of Fifty Dollars (\$50.00) as the court
23 cost.

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1 B. The motion shall be heard at the time fixed in the order and
2 consideration shall be given to any hardship on the plaintiff,
3 complexity of the case, reason for transfer, and other relevant
4 matters. If the motion is denied, the action shall remain on the
5 small claims docket. If the motion is granted, the defendant as
6 movant shall present within ten (10) days and the court shall cause
7 to be filed an order on a form prepared by the Administrative Office
8 of the Courts transferring the action from the small claims docket
9 to another docket. If the transfer order is not filed by the movant
10 within ten (10) days, it shall be reinstated upon the small claims
11 docket upon motion of the small claims plaintiff, and no further
12 transfer shall be authorized. Before the transfer is effected, the
13 movant shall deposit with the clerk the court costs that are charged
14 in other civil cases under Sections 151 through 157 of Title 28 of
15 the Oklahoma Statutes, less any sums that have already been paid to
16 the clerk. After this filing, the costs and other procedural
17 matters shall be governed as in other civil actions, and not under
18 small claims procedure.

19 C. Within twenty (20) days of the date the transfer order is
20 signed, the plaintiff shall file a petition that conforms to the
21 standards of pleadings prescribed by the Oklahoma Pleading Code.
22 The answer of the defendant shall be due within twenty (20) days
23 after the filing of the petition and the reply of the plaintiff in
24 ten (10) days after the answer is filed. If the plaintiff

1 ultimately prevails in the action so transferred by the defendant, a
2 reasonable attorney's fee shall be allowed to plaintiff's attorney
3 to be taxed as costs in the case, in addition to any sanctions which
4 the court may deem appropriate.

5 SECTION 3. AMENDATORY 12 O.S. 2001, Section 1759, as
6 amended by Section 1, Chapter 122, O.S.L. 2005 (12 O.S. Supp. 2008,
7 Section 1759), is amended to read as follows:

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

1 dismissed and the remaining claims, if any, shall proceed under the
2 small claims procedure.

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

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

15 SECTION 4. This act shall become effective November 1, 2009.

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