

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 156

By: Ivester

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5
6 AS INTRODUCED

7 An Act relating to small claims procedure; amending
8 12 O.S. 2001, Sections 1751, as last amended by
9 Section 1, Chapter 70, O.S.L. 2004, 1757, and 1759,
10 as amended by Section 1, Chapter 122, O.S.L. 2005 (12
11 O.S. Supp. 2010, Sections 1751 and 1759), which
12 relate to jurisdiction; expanding actions eligible
13 for small claims docket; increasing allowable amount
14 of certain fees; requiring certain disclaimer;
15 modifying certain time period; increasing amount of
16 claim for transfer of certain cases; updating
17 language; and providing an effective 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 2010, 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

1 attorney fees and other court costs, does not exceed ~~Six Thousand~~
2 Dollars (~~\$6,000.00~~) Seventeen Thousand Dollars (\$17,000.00);

3 2. Actions to replevy personal property the value of which does
4 not exceed ~~Six Thousand Dollars (~~\$6,000.00~~) Seventeen Thousand~~
5 Dollars (\$17,000.00). If the claims for possession of personal
6 property and to recover money are pled in the alternative, the
7 joinder of claims is permissible if neither the value of the
8 property nor the total amount of money sought to be recovered,
9 exclusive of ~~attorneys~~ attorney fees and other costs, exceeds ~~Six~~
10 Thousand Dollars (~~\$6,000.00~~) Seventeen Thousand Dollars
11 (\$17,000.00); and

12 3. Actions in the nature of interpleader, as provided for in
13 Section 2022 of this title, in which the value of the money which is
14 the subject of such action does not exceed ~~Six Thousand Dollars~~
15 (~~\$6,000.00~~) Seventeen Thousand Dollars (\$17,000.00).

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

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

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

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

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

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

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

1 the defendant deposit the sum of Fifty Dollars (\$50.00) as the court
2 cost.

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

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

1 after the filing of the petition and the reply of the plaintiff in
2 ten (10) days after the answer is filed. If the plaintiff
3 ultimately prevails in the action so transferred by the defendant, a
4 reasonable attorney's fee shall be allowed to plaintiff's attorney
5 to be taxed as costs in the case, in addition to any sanctions which
6 the court may deem appropriate.

7 SECTION 3. AMENDATORY 12 O.S. 2001, Section 1759, as
8 amended by Section 1, Chapter 122, O.S.L. 2005 (12 O.S. Supp. 2010,
9 Section 1759), is amended to read as follows:

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

1 Thousand Dollars (\$17,000.00) shall deposit with the clerk the court
2 costs that are charged in other cases, less any sums that have been
3 already paid to the clerk, or the claim shall be dismissed and the
4 remaining claims, if any, shall proceed under the small claims
5 procedure.

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

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

18 SECTION 4. This act shall become effective November 1, 2011.

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