

1 ENGROSSED SENATE  
2 BILL NO. 156

By: Ivester of the Senate

and

McCullough of the House

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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~~  
attorney 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~~  
7 attorney fees and other costs, exceeds ~~Six Thousand Dollars~~  
8 ~~(\$6,000.00)~~ Ten 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~~ attorney fees allowed shall not exceed ~~ten percent (10%)~~  
22 twenty percent (20%) of the 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 1757, is  
11 amended to read as follows:

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

22 B. The motion shall be heard at the time fixed in the order and  
23 consideration shall be given to any hardship on the plaintiff,  
24 complexity of the case, reason for transfer, and other relevant

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

16 C. Within twenty (20) days of the date the transfer order is  
17 signed, the plaintiff shall file a petition that conforms to the  
18 standards of pleadings prescribed by the Oklahoma Pleading Code.  
19 The answer of the defendant shall be due within twenty (20) days  
20 after the filing of the petition and the reply of the plaintiff in  
21 ten (10) days after the answer is filed. If the plaintiff  
22 ultimately prevails in the action so transferred by the defendant, a  
23 reasonable attorney's fee shall be allowed to plaintiff's attorney

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1 to be taxed as costs in the case, in addition to any sanctions which  
2 the court may deem appropriate.

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

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

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

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

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

14 Passed the Senate the 8th day of March, 2011.

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Presiding Officer of the Senate

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18 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,

19 2011.

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Presiding Officer of the House  
of Representatives

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