

1 ENGROSSED SENATE
2 BILL NO. 617

By: Sparks of the Senate

and

Echols of the House

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5
6 An Act relating to small claims procedure; amending
7 12 O.S. 2011, Sections 1751, as amended by Section 1,
8 Chapter 282, O.S.L. 2012, 1757 and 1759, as amended
9 by Section 2, Chapter 282, O.S.L. 2012 (12 O.S. Supp.
10 2014, Sections 1751 and 1759), which relate to
11 jurisdiction and transfer; expanding actions eligible
12 for small claims procedure; authorizing award of
13 certain fees; requiring transfer of certain actions;
14 increasing amount of claim for transfer of certain
15 cases; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2011, Section 1751, as
amended by Section 1, Chapter 282, O.S.L. 2012 (12 O.S. Supp. 2014,
Section 1751), is amended to read as follows:

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

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 attorney fees
and other court costs, does not exceed ~~Seven Thousand Five Hundred~~
~~Dollars (\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00);

1 2. Actions to replevy personal property the value of which does
2 not exceed ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~ Ten
3 Thousand Dollars (\$10,000.00). If the claims for possession of
4 personal property and to recover money are pled in the alternative,
5 the joinder of claims is permissible if neither the value of the
6 property nor the total amount of money sought to be recovered,
7 exclusive of attorney fees and other costs, exceeds ~~Seven Thousand~~
8 ~~Five Hundred Dollars (\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00);
9 and

10 3. Actions in the nature of interpleader, as provided for in
11 Section 2022 of this title, in which the value of the money which is
12 the subject of such action does not exceed ~~Seven Thousand Five~~
13 ~~Hundred Dollars (\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00).

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

21 C. In those cases which are uncontested, the amount of attorney
22 fees allowed shall not exceed ten percent (10%) of the judgment.
23 Additionally, upon application to the court supported by proof of
24 attorney fees incurred, the court may award attorney fees not to

1 exceed twenty percent (20%) of the judgment if the judgment is at
2 least Seven Thousand Five Hundred Dollars (\$7,500.00) but not more
3 than Ten Thousand Dollars (\$10,000.00).

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. 2011, Section 1757, is
16 amended to read as follows:

17 Section 1757. A. On motion of the defendant, a small claims
18 action in which the amount sought to be recovered, exclusive of
19 attorney fees and other court costs, is:

20 1. At least Seven Thousand Five Hundred Dollars (\$7,500.00) but
21 not more than Ten Thousand Dollars (\$10,000.00), shall be
22 transferred from the small claims docket to another docket of the
23 court; or
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1 2. Less than Seven Thousand Five Hundred Dollars (\$7,500.00)

2 may, in the discretion of the court, be transferred from the small
3 claims docket to another docket of the court; provided, that the
4 motion is filed and notice is given by the defendant to the opposing
5 party or parties by mailing a copy of the motion at least
6 forty-eight (48) hours prior to the time fixed in the order for
7 defendant to appear or answer; and provided further, that the
8 defendant deposit the sum of Fifty Dollars (\$50.00) as the court
9 cost.

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

1 the clerk. After this filing, the costs and other procedural
2 matters shall be governed as in other civil actions, and not under
3 small claims procedure.

4 C. Within twenty (20) days of the date the transfer order is
5 signed, the plaintiff shall file a petition that conforms to the
6 standards of pleadings prescribed by the Oklahoma Pleading Code.
7 The answer of the defendant shall be due within twenty (20) days
8 after the filing of the petition and the reply of the plaintiff in
9 ten (10) days after the answer is filed. If the plaintiff
10 ultimately prevails in the action so transferred by the defendant, a
11 reasonable attorney's fee shall be allowed to plaintiff's attorney
12 to be taxed as costs in the case, in addition to any sanctions which
13 the court may deem appropriate.

14 SECTION 3. AMENDATORY 12 O.S. 2011, Section 1759, as
15 amended by Section 2, Chapter 282, O.S.L. 2012 (12 O.S. Supp. 2014,
16 Section 1759), is amended to read as follows:

17 Section 1759. A. Except as provided by subsection C of this
18 section, if a claim, a counterclaim, or a setoff is filed, prior to
19 the expiration of the time prescribed by Section 1758 of this title,
20 for an amount in excess of ~~Seven Thousand Five Hundred Dollars~~
21 ~~(\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00), the action shall be
22 transferred to another docket of the district court unless both
23 parties agree in writing and file the agreement with the papers in
24 the action that the claim, counterclaim, or setoff shall be tried

1 under the small claims procedure. If such an agreement has not been
2 filed, a judgment in excess of ~~Seven Thousand Five Hundred Dollars~~
3 ~~(\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00) may not be enforced
4 for the part that exceeds ~~Seven Thousand Five Hundred Dollars~~
5 ~~(\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00). If the action is
6 transferred to another docket of the district court, the person
7 whose claim exceeded ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~
8 Ten Thousand Dollars (\$10,000.00) shall deposit with the clerk the
9 court costs that are charged in other cases, less any sums that have
10 been already paid to the clerk, or the claim shall be dismissed and
11 the remaining claims, if any, shall proceed under the small claims
12 procedure.

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

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

