

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 661, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Sparks

Sparks-JK-FS-Req#1634
3/21/2017 4:50 PM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

FLOOR SUBSTITUTE
FOR

SENATE BILL NO. 661

By: Sparks and Sykes of the
Senate

and

Kannady of the House

FLOOR SUBSTITUTE

An Act relating to small claims procedure; amending 12 O.S. 2011, Sections 1751, as amended by Section 1, Chapter 282, O.S.L. 2012, 1757 and 1759, as amended by Section 2, Chapter 282, O.S.L. 2012 (12 O.S. Supp. 2016, Sections 1751 and 1759), which relate to jurisdiction and transfer; expanding actions eligible for small claims procedure; authorizing award of certain fees; modifying requirements and procedures for transfer from small claims docket; increasing amount of claim for transfer of certain cases; and providing an effective date.

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. 2016, Section 1751), is amended to read as follows:

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

1 1. Actions for the recovery of money based on contract or tort,
2 including subrogation claims, but excluding libel or slander, in
3 which the amount sought to be recovered, exclusive of attorney fees
4 and other court costs, does not exceed ~~Seven Thousand Five Hundred~~
5 ~~Dollars (\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00);

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

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

19 B. No action may be brought under the small claims procedure by
20 any collection agency, collection agent, or assignee of a claim,
21 except that an action may be brought against an insurer or third-
22 party administrator by a health care provider as that term is
23 defined in Section 6552 of Title 36 of the Oklahoma Statutes, who is
24

1 an assignee of benefits available under an accident and health
2 insurance policy, trust, plan, or contract.

3 C. In those cases which are uncontested, the amount of attorney
4 fees allowed shall not exceed ten percent (10%) of the judgment.
5 Additionally, upon application to the court supported by sufficient
6 documentation, the court may award attorney fees not to exceed
7 twenty-five percent (25%) of the judgment.

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

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

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

19 SECTION 2. AMENDATORY 12 O.S. 2011, Section 1757, is
20 amended to read as follows:

21 Section 1757. A. For matters in which the claim is less than
22 Seven Thousand Five Hundred Dollars (\$7,500.00):

23 1. On motion of the defendant, a small claims action may, in
24 the discretion of the court, be transferred from the small claims

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

7 ~~B.~~ 2. The motion to transfer shall be heard at the time fixed
8 in the order and consideration shall be given to any hardship on the
9 plaintiff, complexity of the case, reason for transfer, and other
10 relevant matters. If the motion is denied, the action shall remain
11 on the small claims docket.

12 B. For matters in which the claim is Seven Thousand Five
13 Hundred Dollars (\$7,500.00) or more, on motion of the defendant, a
14 small claims action shall be transferred from the small claims
15 docket to another docket of the court; provided, that the motion is
16 filed and notice is given by the defendant to the opposing party or
17 parties by mailing a copy of the motion at least forty-eight (48)
18 hours prior to the time fixed in the order for defendant to appear
19 or answer; and provided, further, that the defendant deposit the sum
20 of Fifty Dollars (\$50.00) as the court cost.

21 C. If the motion is granted, the defendant as movant shall
22 present within ten (10) days and the court shall cause to be filed
23 an order on a form prepared by the Administrative Office of the
24 Courts transferring the action from the small claims docket to

1 another docket. If the transfer order is not filed by the movant
2 within ten (10) days, it shall be reinstated upon the small claims
3 docket upon motion of the small claims plaintiff, and no further
4 transfer shall be authorized. Before the transfer is effected, the
5 movant shall deposit with the clerk the court costs that are charged
6 in other civil cases under Sections 151 through 157 of Title 28 of
7 the Oklahoma Statutes, less any sums that have already been paid to
8 the clerk. After this filing, the costs and other procedural
9 matters shall be governed as in other civil actions, and not under
10 small claims procedure.

11 ~~C.~~ D. Within twenty (20) days of the date the transfer order is
12 signed, the plaintiff shall file a petition that conforms to the
13 standards of pleadings prescribed by the Oklahoma Pleading Code.
14 The answer of the defendant shall be due within twenty (20) days
15 after the filing of the petition and the reply of the plaintiff in
16 ten (10) days after the answer is filed.

17 1. For matters in which the claim is less than Seven Thousand
18 Five Hundred Dollars (\$7,500.00), if ~~if~~ the plaintiff ultimately
19 prevails in the action so transferred by the defendant, a reasonable
20 ~~attorney's~~ attorney fee shall be allowed to plaintiff's attorney to
21 be taxed as costs in the case, in addition to any sanctions which
22 the court may deem appropriate.

23 2. For matters in which the claim is Seven Thousand Five
24 Hundred Dollars (\$7,500.00) or more, if attorney fees are otherwise

1 allowed by law, a reasonable attorney fee shall be allowed to be
2 taxed as costs in the case, in addition to any sanctions which the
3 court may deem appropriate.

4 SECTION 3. AMENDATORY 12 O.S. 2011, Section 1759, as
5 amended by Section 2, Chapter 282, O.S.L. 2012 (12 O.S. Supp. 2016,
6 Section 1759), is amended to read as follows:

7 Section 1759. A. Except as provided by subsection C of this
8 section, if a claim, a counterclaim, or a setoff is filed, prior to
9 the expiration of the time prescribed by Section 1758 of this title,
10 for an amount in excess of ~~Seven Thousand Five Hundred Dollars~~
11 ~~(\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00), the action shall be
12 transferred to another docket of the district court unless both
13 parties agree in writing and file the agreement with the papers in
14 the action that the claim, counterclaim, or setoff shall be tried
15 under the small claims procedure. If such an agreement has not been
16 filed, a judgment in excess of ~~Seven Thousand Five Hundred Dollars~~
17 ~~(\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00) may not be enforced
18 for the part that exceeds ~~Seven Thousand Five Hundred Dollars~~
19 ~~(\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00). If the action is
20 transferred to another docket of the district court, the person
21 whose claim exceeded ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~
22 Ten Thousand Dollars (\$10,000.00) shall deposit with the clerk the
23 court costs that are charged in other cases, less any sums that have
24 been already paid to the clerk, or the claim shall be dismissed and

1 the remaining claims, if any, shall proceed under the small claims
2 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, 2017.

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