

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3900

By: Kannady

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8 COMMITTEE SUBSTITUTE

9 An Act relating to civil procedure; amending 12 O.S.
10 2021, Section 2012, which relates to defenses and
11 objections; clarifying procedure for default
12 judgment; updating references; amending 12 O.S. 2021,
13 Section 727.1, which relates to postjudgment
14 interest; clarifying application of interest; and
15 providing an effective date.

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

17 SECTION 1. AMENDATORY 12 O.S. 2021, Section 2012, is
18 amended to read as follows:

19 Section 2012.

20 DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED;

21 BY PLEADING OR MOTION

22 A. WHEN PRESENTED. 1. Unless a different time is prescribed
23 by law, a defendant shall serve an answer:

24 a. within twenty (20) days after the service of the
 summons and petition upon the defendant,

1 b. within twenty (20) days after the service of the
2 summons and petition upon the defendant, or within the
3 last day for answering if applicable; provided, a
4 defendant may file a reservation of time which shall
5 extend the time to respond twenty (20) days from the
6 last date for answering. The filing of such a
7 reservation of time waives defenses of paragraphs 2,
8 3, 4, 5, 6, and 9 of subsection B of this section.

9 2. A party served with a pleading stating a cross-claim against
10 that party shall serve an answer thereto within twenty (20) days
11 after the service upon the party.

12 3. The plaintiff shall serve a reply to a counterclaim in the
13 answer within twenty (20) days after service of the answer or, if a
14 reply is ordered by the court, within twenty (20) days after service
15 of the order, unless the order otherwise directs.

16 4. The party requesting a summons to be issued or filing a
17 ~~counter-claim~~ counterclaim or cross-claim may elect to have the
18 answer served within thirty-five (35) days in lieu of the twenty
19 (20) days set forth in this section.

20 5. The service of a motion permitted under this section or a
21 motion for summary judgment alters these periods of time as follows:
22 if the court denies the motion or postpones its disposition until
23 the trial on the merits, the responsive pleading shall be served
24

1 within twenty (20) days after notice of the court's action, unless a
2 different time is fixed by order of the court.

3 B. HOW PRESENTED. Every defense, in law or fact, to a claim
4 for relief in any pleading, whether a claim, counterclaim, cross-
5 claim, or third-party claim, shall be asserted in the responsive
6 pleading thereto if one is required, except that the following
7 defenses may at the option of the pleader be made by motion:

- 8 1. Lack of jurisdiction over the subject matter;
- 9 2. Lack of jurisdiction over the person;
- 10 3. Improper venue;
- 11 4. Insufficiency of process;
- 12 5. Insufficiency of service of process;
- 13 6. Failure to state a claim upon which relief can be granted;
- 14 7. Failure to join a party under Section 2019 of this title;
- 15 8. Another action pending between the same parties for the same
16 claim;
- 17 9. Lack of capacity of a party to be sued; and
- 18 10. Lack of capacity of a party to sue.

19 A motion making any of these defenses shall be made before pleading
20 if a further pleading is permitted. No defense or objection is
21 waived by being joined with one or more other defenses or objections
22 in a responsive pleading or motion. If a pleading sets forth a
23 claim for relief to which the adverse party is not required to serve
24 a responsive pleading, the adverse party may assert at the trial any

1 defense in law or fact to that claim for relief. If, on a motion
2 asserting the defense ~~numbered~~ in paragraph 6 of this subsection to
3 dismiss for failure of the pleading to state a claim upon which
4 relief can be granted, matters outside the pleading are presented to
5 and not excluded by the court, the motion shall be treated as one
6 for summary judgment and all parties shall be given reasonable
7 opportunity to present all material made pertinent to the motion by
8 the rules for summary judgment. A motion to dismiss for failure to
9 state a claim upon which relief can be granted shall separately
10 state each omission or defect in the petition, and a motion that
11 does not specify such defects or omissions shall be denied without a
12 hearing and the defendant shall answer within twenty (20) days after
13 notice of the court's action.

14 C. PRELIMINARY HEARINGS. The defenses specifically enumerated
15 in paragraphs 1 through 10 of subsection B of this section, whether
16 made in a pleading or by motion, and the motion to strike mentioned
17 in subsection D of this section shall be heard and determined before
18 trial on application of any party, unless the court orders that the
19 hearing and determination thereof be deferred until the trial. If
20 the court determines that venue is proper, the action shall not be
21 dismissed for improper venue as a result of the jury's verdict or
22 the subsequent ruling of the court on a demurrer to the evidence or
23 a motion for a directed verdict.

1 D. MOTION TO STRIKE. Upon motion made by a party before
2 responding to a pleading or, if no responsive pleading is permitted
3 by this act, upon motion made by a party within twenty (20) days
4 after the service of the pleading upon the party or upon the court's
5 own initiative at any time, the court may order stricken from any
6 pleading any insufficient defense. If, on a motion to strike an
7 insufficient defense, matters outside the pleadings are presented to
8 and not excluded by the court, the motion shall be treated as one
9 for partial summary judgment and all parties shall be given
10 reasonable opportunity to present all materials made pertinent to
11 the motion by the rules for summary judgment.

12 E. CONSOLIDATION OF DEFENSES IN MOTION. A party who makes a
13 motion under this section may join with it any other motions herein
14 provided for and then available to the party. If a party makes a
15 motion under this section but omits therefrom any defense or
16 objection then available to the party which this section permits to
17 be raised by motion, the party shall not thereafter make a motion
18 based on the defense or objection so omitted, except a motion as
19 provided in paragraph 2 of subsection F of this section on the
20 grounds there stated. The court in its discretion may permit a
21 party to amend a motion by stating additional defenses or objections
22 if an amendment is sought at least five (5) days before the hearing
23 on the motion.

24 F. WAIVER OR PRESERVATION OF CERTAIN DEFENSES.

1 1. A defense of lack of jurisdiction over the person, improper
2 venue, insufficiency of process, insufficiency of service of
3 process, failure to state a claim upon which relief can be granted,
4 or lack of capacity of a party to be sued is waived:

5 a. if omitted from a motion that raises any of the
6 defenses or objections which this section permits to
7 be raised by motion, or

8 b. if it is not made by motion and it is not included in
9 a responsive pleading or an amendment thereof
10 permitted by subsection A of Section 2015 of this
11 title to be made as a matter of course. A motion to
12 strike an insufficient defense is waived if not raised
13 as in subsection D of this section.

14 2. A defense of failure to join a party indispensable under
15 Section 2019 of this title may be made in any pleading permitted or
16 ordered under subsection A of Section 2007 of this title or at the
17 trial on the merits. A defense of another action pending between
18 the same parties for the same claim or a defense of lack of capacity
19 of a party to sue may be made in any pleading permitted or ordered
20 pursuant to the provisions of subsection A of Section 2007 of this
21 title or at the pretrial conference.

22 3. Whenever it appears by suggestion of the parties or
23 otherwise that the court lacks jurisdiction of the subject matter,
24 the court shall dismiss the action.

1 4. A waiver of the defense in paragraph 6 of subsection B of
2 this section does not preclude a later contention that a party is
3 not entitled to any relief as a matter of law, either by motion for
4 summary judgment, or by demurrer or motion at or after trial.

5 G. FINAL DISMISSAL ON FAILURE TO AMEND. On granting a motion
6 to dismiss a claim for relief, the court shall grant leave to amend
7 if the defect can be remedied and shall specify the time within
8 which an amended pleading shall be filed. If the amended pleading
9 is not filed within the time allowed, final judgment of dismissal
10 with prejudice shall be entered on motion except in cases of
11 excusable neglect. In such cases amendment shall be made by the
12 party in default within a time specified by the court for filing an
13 amended pleading. Within the time allowed by the court for filing
14 an amended pleading, a plaintiff may voluntarily dismiss the action
15 without prejudice.

16 H. MOTION FOR DEFAULT JUDGMENT NOT REQUIRED IF DEFENDANT FAILS
17 TO FILE RESPONSE. Nothing in any provision of this title or in any
18 local or district court rule shall be construed to require either a
19 motion or a hearing for default judgment, and no notice shall be
20 necessary, if, after service of summons and petition, a defendant
21 fails to timely file with the court clerk within twenty (20) days a
22 written appearance, answer, motion, pleading, or response as
23 provided in subsection A of this section. Contact or communication
24 with the plaintiff or attorney of the plaintiff shall not constitute

1 an appearance, answer, motion, pleading, or response unless the
2 contact or communication is in writing and is also timely filed by
3 the defendant in writing with the court clerk as provided in
4 subsection A of this section. The provisions of this subsection
5 shall not be construed to prevent an evidentiary hearing concerning
6 the amount of damages to be awarded.

7 SECTION 2. AMENDATORY 12 O.S. 2021, Section 727.1, is
8 amended to read as follows:

9 Section 727.1

10 POSTJUDGMENT INTEREST

11 A. 1. Except as otherwise provided by this section, all
12 judgments of courts of record, including costs and attorney fees
13 authorized by statute or otherwise and allowed by the court, shall
14 bear interest at a rate prescribed pursuant to this section. Such
15 interest shall also apply to the amounts collected on any judgment
16 enforced during the pendency of an appeal which is subsequently
17 overturned on appeal when restitution is paid to the defendant.

18 2. Costs and attorney fees allowed by the court shall bear
19 interest from the earlier of the date the judgment or order is
20 pronounced, if expressly stated in the written judgment or order
21 awarding the costs and attorney fees, or the date the judgment or
22 order is filed with the court clerk.

23 B. Judgments, including costs and attorney fees authorized by
24 statute or otherwise and allowed by the court, against this state or

1 its political subdivisions, including counties, municipalities,
2 school districts, and public trusts of which this state or a
3 political subdivision of this state is a beneficiary, shall bear
4 interest during the term of judgment at a rate prescribed pursuant
5 to this section from the date of rendition. No judgment against
6 this state or its political subdivisions, including counties,
7 municipalities, school districts, and public trusts of which this
8 state or a political subdivision of this state is a beneficiary,
9 inclusive of postjudgment interest, shall exceed the total amount of
10 liability of the governmental entity pursuant to The Governmental
11 Tort Claims Act.

12 C. The postjudgment interest authorized by subsection A or
13 subsection B of this section shall accrue from the earlier of the
14 date the judgment is rendered as expressly stated in the judgment,
15 or the date the judgment is filed with the court clerk, and shall
16 initially accrue at the rate in effect for the calendar year during
17 which the judgment is rendered until the end of the calendar year in
18 which the judgment was rendered, or until the judgment is paid,
19 whichever first occurs. Beginning on January 1 of the next
20 succeeding calendar year until the end of that calendar year, or
21 until the judgment is paid, whichever first occurs, the judgment,
22 together with postjudgment interest previously accrued, shall bear
23 interest at the rate in effect for judgments rendered during that
24 calendar year as certified by the Administrative Director of the

1 Courts pursuant to subsection I of this section. For each
2 succeeding calendar year, or part of a calendar year, during which a
3 judgment remains unpaid, the judgment, together with postjudgment
4 interest previously accrued, shall bear interest at the rate in
5 effect for judgments rendered during that calendar year as certified
6 by the Administrative Director of the Courts pursuant to subsection
7 I of this section. A separate computation using the interest rate
8 in effect for judgments as provided by subsection I of this section
9 shall be made for each calendar year, or part of a calendar year,
10 during which the judgment remains unpaid in order to determine the
11 total amount of interest for which the judgment debtor is liable.
12 The postjudgment interest rate for each calendar year or part of a
13 calendar year a judgment remains unpaid shall be multiplied by the
14 original amount of the judgment, including any prejudgment interest,
15 together with postjudgment interest previously accrued. Interest
16 shall accrue on a judgment in the manner prescribed by this
17 subsection until the judgment is satisfied or released.

18 D. If a rate of interest is specified in a contract, the rate
19 specified shall apply and be stated in the journal entry of
20 judgment. The rate of interest shall not exceed the lawful rate for
21 that obligation. Postjudgment interest shall be calculated at the
22 contractual rate and accrued in the same manner as prescribed in
23 subsection C of this section.

24 PREJUDGMENT INTEREST

1 E. Except as provided by subsection F of this section,
2 beginning November 1, 2009, if a verdict for damages by reason of
3 personal injuries or injury to personal rights including, but not
4 limited to, injury resulting from bodily restraint, personal insult,
5 defamation, invasion of privacy, injury to personal relations, or
6 detriment due to an act or omission of another is accepted by the
7 trial court, the court in rendering judgment shall add interest on
8 the verdict at a rate prescribed pursuant to subsection I of this
9 section from the date which is twenty-four (24) months after the
10 suit resulting in the judgment was commenced to the earlier of the
11 date the verdict is accepted by the trial court as expressly stated
12 in the judgment, or the date the judgment is filed with the court
13 clerk. No prejudgment interest shall begin to accrue until twenty-
14 four (24) months after the suit resulting in the judgment was
15 commenced. The interest rate for computation of prejudgment
16 interest shall begin with the rate prescribed by subsection I of
17 this section which is in effect for the calendar year which is
18 twenty-four (24) months after the suit resulting in the judgment was
19 commenced. This rate shall be in effect until the end of the
20 calendar year in which interest begins to accrue or until the date
21 judgment is filed, whichever first occurs. Beginning on January 1
22 of the next succeeding calendar year until the end of that calendar
23 year, or until the date the judgment is filed, whichever first
24 occurs, and for each succeeding calendar year thereafter, the

1 prejudgment interest rate shall be the rate in effect for judgments
2 rendered during each calendar year as certified by the
3 Administrative Director of the Courts pursuant to subsection I of
4 this section. After the computation of all prejudgment interest has
5 been completed, the total amount of prejudgment interest shall be
6 added to the amount of the judgment rendered pursuant to the trial
7 of the action, and the total amount of the resulting judgment shall
8 become the amount upon which postjudgment interest is computed
9 pursuant to subsection A of this section.

10 F. If a verdict of the type described by subsection E of this
11 section is rendered against this state or its political
12 subdivisions, including counties, municipalities, school districts,
13 and public trusts of which this state or a political subdivision of
14 this state is a beneficiary, the judgment shall bear interest at the
15 rate prescribed pursuant to subsection I of this section from the
16 date the suit was commenced to the earlier of the date the verdict
17 is accepted by the trial court as expressly stated in the judgment
18 or the date the judgment is filed with the court clerk. The
19 interest rate for computation of prejudgment interest shall begin
20 with the rate prescribed by subsection I of this section which is in
21 effect for the calendar year in which the suit resulting in the
22 judgment is commenced. This rate shall be in effect until the end
23 of the calendar year in which the suit resulting in judgment was
24 filed or until the date the judgment is rendered as expressly stated

1 in the judgment, whichever first occurs. Beginning on January 1 of
2 the next succeeding calendar year until the end of that calendar
3 year, or until the date judgment is rendered, whichever first
4 occurs, and for each succeeding calendar year thereafter, the
5 prejudgment interest rate shall be the rate in effect for judgments
6 rendered during each calendar year as certified by the
7 Administrative Director of the Courts pursuant to subsection I of
8 this section. After the computation of prejudgment interest has
9 been completed, the amount shall be added to the amount of the
10 judgment rendered pursuant to the trial of the action, and the total
11 amount of the resulting judgment shall become the amount upon which
12 postjudgment interest is computed pursuant to subsection B of this
13 section. No award of prejudgment interest against this state or its
14 political subdivisions, including counties, municipalities, school
15 districts, and public trusts of which this state or a political
16 subdivision of this state is a beneficiary, including the amount of
17 the judgment awarded pursuant to trial of the action, shall exceed
18 the total amount of liability of the governmental entity pursuant to
19 The Governmental Tort Claims Act.

20 G. If exemplary or punitive damages are awarded in an action
21 for personal injury or injury to personal rights including, but not
22 limited to, injury resulting from bodily restraint, personal insult,
23 defamation, invasion of privacy, injury to personal relations, or
24 detriment due to an act or omission of another, the interest on that

1 award shall begin to accrue from the earlier of the date the
2 judgment is rendered as expressly stated in the judgment, or the
3 date the judgment is filed with the court clerk.

4 H. If a judgment is rendered establishing the existence of a
5 lien against property and no rate of interest exists, the court
6 shall allow prejudgment interest at a rate prescribed pursuant to
7 subsection I of this section from the date the lien is filed to the
8 date of verdict.

9 I. For purposes of computing postjudgment interest as
10 authorized by this section, interest shall be the prime rate, as
11 listed in the first edition of the Wall Street Journal published for
12 each calendar year and as certified to the Administrative Director
13 of the Courts by the State Treasurer on the first regular business
14 day following publication in January of each year, plus two percent
15 (2%). For purposes of computing prejudgment interest as authorized
16 by this section, interest shall be determined using a rate equal to
17 the average United States Treasury Bill rate of the preceding
18 calendar year as certified to the Administrative Director of the
19 Courts by the State Treasurer on the first regular business day in
20 January of each year.

21 J. For purposes of computing postjudgment interest, the
22 provisions of this section shall be applicable to all judgments of
23 the district courts rendered on or after January 1, 2005. Effective
24 January 1, 2005, the method for computing postjudgment interest

1 prescribed by this section shall be applicable to all judgments
2 remaining unpaid rendered prior to January 1, 2005.

3 K. For purposes of computing prejudgment interest, the
4 provisions of this section shall be applicable to all actions which
5 are filed in the district courts on or after January 1, 2010, for
6 which an award of prejudgment interest is authorized by the
7 provisions of this section.

8 SECTION 3. This act shall become effective November 1, 2022.

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10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated
11 02/10/2022 - DO PASS, As Amended.
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