

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

SENATE BILL 31

By: Daniels

AS INTRODUCED

An Act relating to the Oklahoma Pleading Code; amending 12 O.S. 2011, Section 2004, as last amended by Section 1, Chapter 305, O.S.L. 2017 (12 O.S. Supp. 2020, Section 2004), which relates to process; requiring dismissal of certain actions within certain time period; requiring mailing of certain order; updating statutory language; and declaring an emergency.

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

SECTION 1. AMENDATORY 12 O.S. 2011, Section 2004, as last amended by Section 1, Chapter 305, O.S.L. 2017 (12 O.S. Supp. 2020, Section 2004), is amended to read as follows:

Section 2004.

PROCESS

A. SUMMONS: ISSUANCE. Upon filing of the petition, the clerk shall forthwith issue a summons. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

B. SUMMONS: FORM.

1. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the

1 parties, be directed to the defendant, state the name and address of
2 the plaintiff's attorney, if any, otherwise, the plaintiff's
3 address, and the time within which these rules require the defendant
4 to appear and defend, and shall notify the defendant that in case of
5 failure to appear, judgment by default will be rendered against the
6 defendant for the relief demanded in the petition.

7 2. A judgment by default shall not be different in kind from or
8 exceed in amount that prayed for in either the demand for judgment
9 or in cases not sounding in contract in a notice which has been
10 given the party against whom default judgment is sought. Except as
11 to a party against whom a judgment is entered by default, every
12 final judgment shall grant the relief to which the party in whose
13 favor it is rendered is entitled, even if the party has not demanded
14 such relief in his or her pleadings.

15 C. BY WHOM SERVED: PERSON TO BE SERVED.

16 1. SERVICE BY PERSONAL DELIVERY.

17 a. At the election of the plaintiff, process, other than
18 a subpoena, shall be served by a sheriff or deputy
19 sheriff, a person licensed to make service of process
20 in civil cases, or a person specially appointed for
21 that purpose. The court shall freely make special
22 appointments to serve all process, other than a
23 subpoena, under this paragraph.
24

1 b. A summons to be served by the sheriff or deputy
2 sheriff shall be delivered to the sheriff by the court
3 clerk or an attorney of record for the plaintiff.
4 When a summons, subpoena, or other process is to be
5 served by the sheriff or deputy sheriff of another
6 county, the court clerk shall mail it, together with
7 the voucher of the court clerk for the fees collected
8 for the service, to the sheriff of that county. The
9 sheriff shall deposit the voucher in the Sheriff's
10 Service Fee Account created pursuant to Section 514.1
11 of Title 19 of the Oklahoma Statutes. The sheriff or
12 deputy sheriff shall serve the process in the manner
13 that other process issued out of the court of the
14 sheriff's own county is served. A summons to be
15 served by a person licensed to make service of process
16 in civil cases or by a person specially appointed for
17 that purpose shall be delivered by an attorney of
18 record for the plaintiff to such person.

19 c. Service shall be made as follows:

20 (1) upon an individual other than an infant who is
21 less than fifteen (15) years of age or an
22 incompetent person, by delivering a copy of the
23 summons and of the petition personally or by
24 leaving copies thereof at the person's dwelling

1 house or usual place of abode with some person
2 then residing therein who is fifteen (15) years
3 of age or older or by delivering a copy of the
4 summons and of the petition to an agent
5 authorized by appointment or by law to receive
6 service of process,

7 (2) upon an infant who is less than fifteen (15)
8 years of age, by serving the summons and petition
9 personally and upon either of the infant's
10 parents or guardian, or if they cannot be found,
11 then upon the person having the care or control
12 of the infant or with whom the infant lives; and
13 upon an incompetent person by serving the summons
14 and petition personally and upon the incompetent
15 person's guardian,

16 (3) upon a domestic or foreign corporation or upon a
17 partnership or other unincorporated association
18 which is subject to suit under a common name, by
19 delivering a copy of the summons and of the
20 petition to an officer, a managing or general
21 agent, or to any other agent authorized by
22 appointment or by law to receive service of
23 process and, if the agent is one authorized by
24 statute to receive service and the statute so

requires, by also mailing a copy to the
defendant,

(4) upon the United States or an officer or agency
thereof in the manner specified by Federal Rule
of Civil Procedure 4,

(5) upon a state, county, school district, public
trust or municipal corporation or other
governmental organization thereof subject to
suit, by delivering a copy of the summons and of
the petition to the officer or individual
designated by specific statute; however, if there
is no statute, then upon the chief executive
officer or a clerk, secretary, or other official
whose duty it is to maintain the official records
of the organization,

(6) upon an inmate incarcerated in an institution
under the jurisdiction and control of the
Department of Corrections, by delivering a copy
of the summons and of the petition to the warden
or superintendent or the designee of the warden
or superintendent of the institution where the
inmate is housed. It shall be the duty of the
receiving warden or superintendent or a designee
to promptly deliver the summons and petition to

1 the inmate named therein. The warden or
2 superintendent or his or her designee shall
3 reject service of process for any inmate who is
4 not actually present in ~~said~~ the institution, and
5 (7) upon an inmate incarcerated in a county jail or
6 detention center under the jurisdiction and
7 control of the county sheriff or the jail trust
8 of the county, by delivering a copy of the
9 summons and of the petition to the jail or
10 detention center administrator or the designee of
11 such administrator of the jail or detention
12 center where the inmate is housed. It shall be
13 the duty of the receiving jail or detention
14 center administrator or designee to promptly
15 deliver the summons and petition to the inmate
16 named therein. The jail or detention center
17 administrator or designee shall reject service of
18 process for any inmate who is not actually
19 present in the jail or detention center.

20 2. SERVICE BY MAIL.

21 a. At the election of the plaintiff, a summons and
22 petition may be served by mail by the plaintiff's
23 attorney, any person authorized to serve process
24 pursuant to subparagraph a of paragraph 1 of this

1 subsection, or by the court clerk upon a defendant of
2 any class referred to in division (1), (3) or (5) of
3 subparagraph c of paragraph 1 of this subsection.

4 Service by mail shall be effective on the date of
5 receipt or if refused, on the date of refusal of the
6 summons and petition by the defendant.

- 7 b. Service by mail shall be accomplished by mailing a
8 copy of the summons and petition by certified mail,
9 return receipt requested and delivery restricted to
10 the addressee. When there is more than one defendant,
11 the summons and a copy of the petition or order shall
12 be mailed in a separate envelope to each defendant.
13 If the summons is to be served by mail by the court
14 clerk, the court clerk shall enclose the summons and a
15 copy of the petition or order of the court to be
16 served in an envelope, prepared by the plaintiff,
17 addressed to the defendant, or to the resident service
18 agent if one has been appointed. The court clerk
19 shall prepay the postage and mail the envelope to the
20 defendant, or service agent, by certified mail, return
21 receipt requested and delivery restricted to the
22 addressee. The return receipt shall be prepared by
23 the plaintiff. Service by mail to a garnishee shall
24 be accomplished by mailing a copy of the summons and

1 notice by certified mail, return receipt requested,
2 and at the election of the judgment creditor by
3 restricted delivery, to the addressee.

4 c. Service by mail shall not be the basis for the entry
5 of a default or a judgment by default unless the
6 record contains a return receipt showing acceptance by
7 the defendant or a returned envelope showing refusal
8 of the process by the defendant. Acceptance or
9 refusal of service by mail by a person who is fifteen
10 (15) years of age or older who resides at the
11 defendant's dwelling house or usual place of abode
12 shall constitute acceptance or refusal by the party
13 addressed. In the case of an entity described in
14 division (3) of subparagraph c of paragraph 1 of this
15 subsection, acceptance or refusal by any officer or by
16 any employee of the registered office or principal
17 place of business who is authorized to or who
18 regularly receives certified mail shall constitute
19 acceptance or refusal by the party addressed. A
20 return receipt signed at such registered office or
21 principal place of business shall be presumed to have
22 been signed by an employee authorized to receive
23 certified mail. In the case of a state municipal
24 corporation, or other governmental organization

1 thereof subject to suit, acceptance or refusal by an
2 employee of the office of the officials specified in
3 division (5) of subparagraph c of paragraph 1 of this
4 subsection who is authorized to or who regularly
5 receives certified mail shall constitute acceptance or
6 refusal by the party addressed. If delivery of the
7 process is refused, upon the receipt of notice of such
8 refusal and at least ten (10) days before applying for
9 entry of default, the person elected by plaintiff
10 pursuant to subparagraph a of this paragraph to serve
11 the process shall mail to the defendant by first-class
12 mail a copy of the summons and petition and a notice
13 prepared by the plaintiff that despite such refusal
14 the case will proceed and that judgment by default
15 will be rendered against him unless he appears to
16 defend the suit. Any default or judgment by default
17 shall be set aside upon motion of the defendant in the
18 manner prescribed in Section 1031.1 of this title, or
19 upon petition of the defendant in the manner
20 prescribed in Section 1033 of this title if the
21 defendant demonstrates to the court that the return
22 receipt was signed or delivery was refused by an
23 unauthorized person. A petition shall be filed within
24 one (1) year after the defendant has notice of the

1 default or judgment by default but in no event more
2 than two (2) years after the filing of the judgment.

3 3. SERVICE BY PUBLICATION.

4 a. Service of summons upon a named defendant may be made
5 by publication when it is stated in the petition,
6 verified by the plaintiff or the plaintiff's attorney,
7 or in a separate affidavit by the plaintiff or the
8 plaintiff's attorney filed with the court, that with
9 due diligence service cannot be made upon the
10 defendant by any other method.

11 b. Service of summons upon the unknown successors of a
12 named defendant, a named decedent, or a dissolved
13 partnership, corporation, or other association may be
14 made by publication when it is stated in a petition,
15 verified by the plaintiff or the plaintiff's attorney,
16 or in a separate affidavit by the plaintiff or the
17 plaintiff's attorney filed with the court, that the
18 person who verified the petition or the affidavit does
19 not know and with due diligence cannot ascertain the
20 following:

21 (1) whether a person named as defendant is living or
22 dead, and, if dead, the names or whereabouts of
23 the person's successors, if any,
24

- 1 (2) the names or whereabouts of the unknown
2 successors, if any, of a named decedent,
3 (3) whether a partnership, corporation, or other
4 association named as a defendant continues to
5 have legal existence or not; or the names or
6 whereabouts of its officers or successors,
7 (4) whether any person designated in a record as a
8 trustee continues to be the trustee; or the names
9 or whereabouts of the successors of the trustee,
10 or
11 (5) the names or whereabouts of the owners or holders
12 of special assessment or improvement bonds, or
13 any other bonds, sewer warrants or tax bills.

14 c. Service pursuant to this paragraph shall be made by
15 publication of a notice, signed by the court clerk,
16 one (1) day a week for three (3) consecutive weeks in
17 a newspaper authorized by law to publish legal notices
18 which is published in the county where the petition is
19 filed. If no newspaper authorized by law to publish
20 legal notices is published in such county, the notice
21 shall be published in some such newspaper of general
22 circulation which is published in an adjoining county.
23 All named parties and their unknown successors who may
24 be served by publication may be included in one

1 notice. The notice shall state the court in which the
2 petition is filed and the names of the plaintiff and
3 the parties served by publication, and shall designate
4 the parties whose unknown successors are being served.
5 The notice shall also state that the named defendants
6 and their unknown successors have been sued and must
7 answer the petition on or before a time to be stated
8 (which shall not be less than forty-one (41) days from
9 the date of the first publication), or judgment, the
10 nature of which shall be stated, will be rendered
11 accordingly. If jurisdiction of the court is based on
12 property, any real property subject to the
13 jurisdiction of the court and any property or debts to
14 be attached or garnished must be described in the
15 notice.

16 (1) When the recovery of money is sought, it is not
17 necessary for the publication notice to state the
18 separate items involved, but the total amount
19 that is claimed must be stated. When interest is
20 claimed, it is not necessary to state the rate of
21 interest, the date from which interest is
22 claimed, or that interest is claimed until the
23 obligation is paid.
24

1 (2) It is not necessary for the publication notice to
2 state that the judgment will include recovery of
3 costs in order for a judgment following the
4 publication notice to include costs of suit.

5 (3) In an action to quiet title to real property, it
6 is not necessary for the publication notice to
7 state the nature of the claim or interest of
8 either party, and in describing the nature of the
9 judgment that will be rendered should the
10 defendant fail to answer, it is sufficient to
11 state that a decree quieting plaintiff's title to
12 the described property will be entered. It is
13 not necessary to state that a decree forever
14 barring the defendant from asserting any interest
15 in or to the property is sought or will be
16 entered if the defendant does not answer.

17 (4) In an action to foreclose a mortgage, it is
18 sufficient that the publication notice state that
19 if the defendant does not answer, the defendant's
20 interest in the property will be foreclosed. It
21 is not necessary to state that a judgment forever
22 barring the defendant from all right, title,
23 interest, estate, property and equity of
24 redemption in or to ~~said~~ the property or any part

1 thereof is requested or will be entered if the
2 defendant does not answer.

3 d. Service by publication is complete when made in the
4 manner and for the time prescribed in subparagraph c
5 of this paragraph. Service by publication shall be
6 proved by the affidavit of any person having knowledge
7 of the publication. No default judgment may be
8 entered on such service until proof of service by
9 publication is filed with and approved by the court.

10 e. Before entry of a default judgment or order against a
11 party who has been served solely by publication under
12 this paragraph, the court shall conduct an inquiry to
13 determine whether the plaintiff, or someone acting in
14 behalf of the plaintiff, made a distinct and
15 meaningful search of all reasonably available sources
16 to ascertain the whereabouts of any named parties who
17 have been served solely by publication under this
18 paragraph. Before entry of a default judgment or
19 order against the unknown successors of a named
20 defendant, a named decedent, or a dissolved
21 partnership, corporation or association, the court
22 shall conduct an inquiry to ascertain whether the
23 requirements described in subparagraph b of this
24 paragraph have been satisfied.

1 f. A party against whom a default judgment or order has
2 been rendered, without other service than by
3 publication in a newspaper, may, at any time within
4 three (3) years after the filing of the judgment or
5 order, have the judgment or order set aside in the
6 manner prescribed in Sections 1031.1 and 1033 of this
7 title. Before the judgment or order is set aside, the
8 applicant shall notify the adverse party of the
9 intention to make an application and shall file a full
10 answer to the petition, pay all costs if the court
11 requires them to be paid, and satisfy the court by
12 affidavit or other evidence that during the pendency
13 of the action the applicant had no actual notice
14 thereof in time to appear in court and make a defense.
15 The title to any property which is the subject of and
16 which passes to a purchaser in good faith by or in
17 consequence of the judgment or order to be opened
18 shall not be affected by any proceedings under this
19 subparagraph. Nor shall proceedings under this
20 subparagraph affect the title of any property sold
21 before judgment under an attachment. The adverse
22 party, on the hearing of an application to open a
23 judgment or order as provided by this subparagraph,
24 shall be allowed to present evidence to show that

1 during the pendency of the action the applicant had
2 notice thereof in time to appear in court and make a
3 defense.

4 g. The term "successors" includes all heirs, executors,
5 administrators, devisees, trustees, and assigns,
6 immediate and remote, of a named individual,
7 partnership, corporation, or association.

8 h. Service outside of the state does not give the court
9 in personal jurisdiction over a defendant who is not
10 subject to the jurisdiction of the courts of this
11 state or who has not, either in person or through an
12 agent, submitted to the jurisdiction of the courts of
13 this state.

14 4. SERVICE ON THE SECRETARY OF STATE.

15 a. Service of process on a domestic or foreign
16 corporation may be made by serving the Secretary of
17 State as the corporation's agent, if:

18 (1) there is no registered agent for the corporation
19 listed in the records of the Secretary of State,
20 or

21 (2) neither the registered agent nor an officer of
22 the corporation could be found at the registered
23 office of the corporation, when service of
24 process was attempted.

1 b. Before resorting to service on the Secretary of State
2 the plaintiff must have attempted service either in
3 person or by mail on the corporation at:

4 (1) the corporation's last-known address shown on the
5 records of the Franchise Tax Division of the
6 Oklahoma Tax Commission, if any is listed there,
7 and

8 (2) the corporation's last-known address shown on the
9 records of the Secretary of State, if any is
10 listed there, and

11 (3) the corporation's last address known to the
12 plaintiff.

13 If any of these addresses are the same, the plaintiff
14 is not required to attempt service more than once at
15 any address. The plaintiff shall furnish the
16 Secretary of State with a certified copy of the return
17 or returns showing the attempted service.

18 c. Service on the Secretary of State shall be made by
19 filing two (2) copies of the summons and petition with
20 the Secretary of State, notifying the Secretary of
21 State that service is being made pursuant to the
22 provisions of this paragraph, and paying the Secretary
23 of State the fee prescribed in paragraph 7 of
24 subsection A of Section 1142 of Title 18 of the

1 Oklahoma Statutes, which fee shall be taxed as part of
2 the costs of the action, suit or proceeding if the
3 plaintiff shall prevail therein. If a registered
4 agent for the corporation is listed in the records of
5 the Secretary of State, the plaintiff must also
6 furnish a certified copy of the return showing that
7 service on the registered agent has been attempted
8 either in person or by mail, and that neither the
9 registered agent nor an officer of the corporation
10 could be found at the registered office of the
11 corporation.

- 12 d. Within three (3) working days after receiving the
13 summons and petition, the Secretary of State shall
14 send notice by letter, certified mail, return receipt
15 requested, directed to the corporation at its
16 registered office or the last-known address found in
17 the office of the Secretary of State, or if no address
18 is found there, to the corporation's last-known
19 address provided by the plaintiff. The notice shall
20 enclose a copy of the summons and petition and any
21 other papers served upon the Secretary of State. The
22 corporation shall not be required to serve its answer
23 until forty (40) days after service of the summons and
24 petition on the Secretary of State.

1 e. Before entry of a default judgment or order against a
2 corporation that has been served by serving the
3 Secretary of State as its agent under this paragraph,
4 the court shall determine whether the requirements of
5 this paragraph have been satisfied. A default
6 judgment or order against a corporation that has been
7 served only by service on the Secretary of State may
8 be set aside upon motion of the corporation in the
9 manner prescribed in Section 1031.1 of this title, or
10 upon petition of the corporation in the manner
11 prescribed in Section 1033 of this title, if the
12 corporation demonstrates to the court that it had no
13 actual notice of the action in time to appear and make
14 its defense. A petition shall be filed within one (1)
15 year after the corporation has notice of the default
16 judgment or order but in no event more than two (2)
17 years after the filing of the default judgment or
18 order.

19 f. The Secretary of State shall maintain an alphabetical
20 record of service setting forth the name of the
21 plaintiff and defendant, the title, docket number, and
22 nature of the proceeding in which the process has been
23 served upon the defendant, the fact that service has
24 been effected pursuant to the provisions of this

1 paragraph, the return date thereof, and the date when
2 the service was made. The Secretary of State shall
3 not be required to retain this information for a
4 period longer than five (5) years from receipt of the
5 service of process.

6 g. The provisions of this paragraph shall not apply to a
7 foreign insurance company doing business in this
8 state.

9 5. SERVICE BY ACKNOWLEDGMENT. An acknowledgment on the back of
10 the summons or the voluntary appearance of a defendant is equivalent
11 to service.

12 6. SERVICE BY OTHER METHODS. If service cannot be made by
13 personal delivery or by mail, a defendant of any class referred to
14 in division (1) or (3) of subparagraph c of paragraph 1 of this
15 subsection may be served as provided by court order in a manner
16 which is reasonably calculated to give the defendant actual notice
17 of the proceedings and an opportunity to be heard and upon filing an
18 affidavit by the plaintiff or plaintiff's attorney that with due
19 diligence service cannot otherwise be made upon the defendant.

20 7. NO SERVICE BY PRISONER. No prisoner in any jail, Department
21 of Corrections facility, private prison, or parolee or probationer
22 under supervision of the Department of Corrections shall be
23 appointed by any court to serve process on any defendant, party or
24 witness.

1 D. SUMMONS AND PETITION. The summons and petition shall be
2 served together. The plaintiff shall furnish the person making
3 service with such copies as are necessary. The failure to serve a
4 copy of the petition with the summons is not a ground for dismissal
5 for insufficiency of service of process, but on motion of the party
6 served, the court may extend the time to answer or otherwise plead.
7 If a summons and petition are served by personal delivery, the
8 person serving the summons shall state on the copy that is left with
9 the person served the date that service is made. This provision is
10 not jurisdictional, but if the failure to comply with it prejudices
11 the party served, the court, on motion of the party served, may
12 extend the time to answer or otherwise plead.

13 E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

14 1. Service of the summons and petition may be made anywhere
15 within this state in the manner provided by subsection C of this
16 section.

17 2. When the exercise of jurisdiction is authorized by
18 subsection F of this section, service of the summons and petition
19 may be made outside this state:

- 20 a. by personal delivery in the manner prescribed for
21 service within this state,
22 b. in the manner prescribed by the law of the place in
23 which the service is made for service in that place in
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1 an action in any of its courts of general
2 jurisdiction,

3 c. in the manner prescribed by paragraph 2 of subsection
4 C of this section,

5 d. as directed by the foreign authority in response to a
6 letter rogatory,

7 e. in the manner prescribed by paragraph 3 of subsection
8 C of this section only when permitted by subparagraphs
9 a and b of paragraph 3 of subsection C of this
10 section, or

11 f. as directed by the court.

12 3. Proof of service outside this state may be made in the
13 manner prescribed by subsection G of this section, the order
14 pursuant to which the service is made, or the law of the place in
15 which the service is made for proof of service in an action in any
16 of its courts of general jurisdiction.

17 4. Service outside this state may be made by an individual
18 permitted to make service of process under the law of this state or
19 under the law of the place in which the service is made or who is
20 designated to make service by a court of this state.

21 5. When subsection C of this section requires that in order to
22 effect service one or more designated individuals be served, service
23 outside this state under this section must be made upon the
24 designated individual or individuals.

- 1 6. a. A court of this state may order service upon any
2 person who is domiciled or can be found within this
3 state of any document issued in connection with a
4 proceeding in a tribunal outside this state. The
5 order may be made upon application of any interested
6 person or in response to a letter rogatory issued by a
7 tribunal outside this state and shall direct the
8 manner of service.
- 9 b. Service in connection with a proceeding in a tribunal
10 outside this state may be made within this state
11 without an order of court.
- 12 c. Service under this paragraph does not, of itself,
13 require the recognition or enforcement of an order,
14 judgment, or decree rendered outside this state.

15 F. ASSERTION OF JURISDICTION. A court of this state may
16 exercise jurisdiction on any basis consistent with the Constitution
17 of this state and the Constitution of the United States.

18 G. RETURN.

19 1. The person serving the process shall make proof of service
20 thereof to the court promptly and in any event within the time
21 during which the person served must respond to the process, but the
22 failure to make proof of service does not affect the validity of the
23 service.

1 2. When process has been served by a sheriff or deputy sheriff
2 and return thereof is filed in the office of the court clerk, a copy
3 of the return shall be sent by the court clerk to the plaintiff's
4 attorney within three (3) days after the return is filed. If
5 service is made by a person other than a sheriff or deputy sheriff,
6 the licensed process server shall make affidavit thereof. The
7 return shall set forth the county of issuance, the name of the
8 person served and the date, place, and method of service.

9 3. If service was by mail, the person mailing the summons and
10 petition shall endorse on the copy of the summons or order of the
11 court that is filed in the action the date and place of mailing and
12 the date when service was receipted or service was rejected, and
13 shall attach to the copy of the summons or order a copy of the
14 return receipt or returned envelope, if and when received, showing
15 whether the mailing was accepted, refused, or otherwise returned.
16 If the mailing was refused, the return shall also show the date and
17 place of any subsequent mailing pursuant to paragraph 2 of
18 subsection C of this section. When the summons and petition are
19 mailed by the court clerk, the court clerk shall notify the
20 plaintiff's attorney within three (3) days after receipt of the
21 returned card or envelope showing that the card or envelope has been
22 received.

23 H. AMENDMENT. At any time in its discretion and upon such
24 terms as it deems just, the court may allow any process or proof of
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1 service thereof to be amended, unless it clearly appears that
2 material prejudice would result to the substantial rights of the
3 party against whom the process issued.

4 I. SUMMONS: TIME LIMIT FOR SERVICE. If service of process is
5 not made upon a defendant within one hundred eighty (180) days after
6 the filing of the petition and the plaintiff has not shown good
7 cause why such service was not made within that period, the action
8 shall be deemed dismissed as to that defendant without prejudice and
9 Section 100 of this title shall be applicable to any refiling of the
10 action. Upon application of a defendant not timely served, the
11 court shall enter an order dismissing the action as to that
12 defendant. The court shall enter a dismissal order of an action
13 within two hundred (200) days after the filing of the action in
14 which no service has been made on any defendant as required pursuant
15 to this section and such order shall be mailed to the address of the
16 party or the party's attorney of record. The action shall not be
17 dismissed if a summons was served on the defendant within one
18 hundred eighty (180) days after the filing of the petition and a
19 court later holds that the summons or its service was invalid.
20 After a court quashes a summons or its service, a new summons may be
21 served on the defendant within a time specified by the judge. If
22 the new summons is not served within the specified time, the action
23 shall be deemed to have been dismissed without prejudice as to that
24 defendant. This subsection shall not apply with respect to a

1 defendant who has been outside of this state for one hundred eighty
2 (180) days following the filing of the petition.

3 SECTION 2. It being immediately necessary for the preservation
4 of the public peace, health or safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

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