

1 **SENATE FLOOR VERSION**

2 April 15, 2025

3 ENGROSSED HOUSE

4 BILL NO. 2138

By: Kannady of the House

and

Rosino of the Senate

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7  
8 An Act relating to civil procedure; amending 12 O.S.  
9 2021, Section 2012, which relates to defenses and  
10 objections; providing procedures for default judgment  
11 under certain circumstances; clarifying effect of  
12 certain contact or communication; clarifying effect  
13 on evidentiary hearing for damages; amending 12 O.S.  
14 2021, Section 727.1, which relates to postjudgment  
15 interest; providing for certain postjudgment interest  
16 during pendency of an appeal; and providing an  
17 effective date.

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

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

21 Section 2012.

22 DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED;

23 BY PLEADING OR MOTION

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

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 6 of this subsection to dismiss for  
3 failure of the pleading to state a claim upon which relief can be  
4 granted, matters outside the pleading are presented to and not  
5 excluded by the court, the motion shall be treated as one for  
6 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.

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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 damage 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, 2025.

9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
10 April 15, 2025 - DO PASS  
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