

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 60th Legislature (2025)

4 COMMITTEE SUBSTITUTE
FOR
5 HOUSE BILL NO. 2138

By: Kannady of the House

6 and

7 **Rosino** of the Senate

10 COMMITTEE SUBSTITUTE

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

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

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

24 Section 2012.

DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED;

BY PLEADING OR MOTION

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

- 3 a. within twenty (20) days after the service of the
4 summons and petition upon the defendant,
5 b. within twenty (20) days after the service of the
6 summons and petition upon the defendant, or within the
7 last day for answering if applicable; provided, a
8 defendant may file a reservation of time which shall
9 extend the time to respond twenty (20) days from the
10 last date for answering. The filing of such a
11 reservation of time waives defenses of paragraphs 2,
12 3, 4, 5, 6, and 9 of subsection B of this section.

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

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

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

1 5. The service of a motion permitted under this section or a
2 motion for summary judgment alters these periods of time as follows:
3 if the court denies the motion or postpones its disposition until
4 the trial on the merits, the responsive pleading shall be served
5 within twenty (20) days after notice of the court's action, unless a
6 different time is fixed by order of the court.

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

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

23 A motion making any of these defenses shall be made before pleading
24 if a further pleading is permitted. No defense or objection is

1 waived by being joined with one or more other defenses or objections
2 in a responsive pleading or motion. If a pleading sets forth a
3 claim for relief to which the adverse party is not required to serve
4 a responsive pleading, the adverse party may assert at the trial any
5 defense in law or fact to that claim for relief. If, on a motion
6 asserting the defense numbered 6 of this subsection to dismiss for
7 failure of the pleading to state a claim upon which relief can be
8 granted, matters outside the pleading are presented to and not
9 excluded by the court, the motion shall be treated as one for
10 summary judgment and all parties shall be given reasonable
11 opportunity to present all material made pertinent to the motion by
12 the rules for summary judgment. A motion to dismiss for failure to
13 state a claim upon which relief can be granted shall separately
14 state each omission or defect in the petition, and a motion that
15 does not specify such defects or omissions shall be denied without a
16 hearing and the defendant shall answer within twenty (20) days after
17 notice of the court's action.

18 C. PRELIMINARY HEARINGS. The defenses specifically enumerated
19 in paragraphs 1 through 10 of subsection B of this section, whether
20 made in a pleading or by motion, and the motion to strike mentioned
21 in subsection D of this section shall be heard and determined before
22 trial on application of any party, unless the court orders that the
23 hearing and determination thereof be deferred until the trial. If
24 the court determines that venue is proper, the action shall not be

1 dismissed for improper venue as a result of the jury's verdict or
2 the subsequent ruling of the court on a demurrer to the evidence or
3 a motion for a directed verdict.

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

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

1 if an amendment is sought at least five (5) days before the hearing
2 on the motion.

3 F. WAIVER OR PRESERVATION OF CERTAIN DEFENSES.

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

- 8 a. if omitted from a motion that raises any of the
9 defenses or objections which this section permits to
10 be raised by motion, or
- 11 b. if it is not made by motion and it is not included in
12 a responsive pleading or an amendment thereof
13 permitted by subsection A of Section 2015 of this
14 title to be made as a matter of course. A motion to
15 strike an insufficient defense is waived if not raised
16 as in subsection D of this section.

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

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

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

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

19 H. MOTION FOR DEFAULT JUDGMENT NOT REQUIRED IF DEFENDANT FAILS
20 TO FILE RESPONSE. Nothing in any provision of this title or in any
21 local or district court rule shall be construed to require either a
22 motion or a hearing for default judgment, and no notice shall be
23 necessary, if, after service of summons and petition, a defendant
24 fails to timely file with the court clerk within twenty (20) days a

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

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

12 Section 727.1.

13 POSTJUDGMENT INTEREST

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

21 2. Costs and attorney fees allowed by the court shall bear
22 interest from the earlier of the date the judgment or order is
23 pronounced, if expressly stated in the written judgment or order

1 awarding the costs and attorney fees, or the date the judgment or
2 order is filed with the court clerk.

3 B. Judgments, including costs and attorney fees authorized by
4 statute or otherwise and allowed by the court, against this state or
5 its political subdivisions, including counties, municipalities,
6 school districts, and public trusts of which this state or a
7 political subdivision of this state is a beneficiary, shall bear
8 interest during the term of judgment at a rate prescribed pursuant
9 to this section from the date of rendition. No judgment against
10 this state or its political subdivisions, including counties,
11 municipalities, school districts, and public trusts of which this
12 state or a political subdivision of this state is a beneficiary,
13 inclusive of postjudgment interest, shall exceed the total amount of
14 liability of the governmental entity pursuant to The Governmental
15 Tort Claims Act.

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

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

22 D. If a rate of interest is specified in a contract, the rate
23 specified shall apply and be stated in the journal entry of
24 judgment. The rate of interest shall not exceed the lawful rate for

1 that obligation. Postjudgment interest shall be calculated at the
2 contractual rate and accrued in the same manner as prescribed in
3 subsection C of this section.

PREJUDGMENT INTEREST

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

1 judgment is filed, whichever first occurs. Beginning on January 1
2 of the next succeeding calendar year until the end of that calendar
3 year, or until the date the judgment is filed, 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 all prejudgment interest has
9 been completed, the total amount of prejudgment interest shall be
10 added to the amount of the judgment rendered pursuant to the trial
11 of the action, and the total amount of the resulting judgment shall
12 become the amount upon which postjudgment interest is computed
13 pursuant to subsection A of this section.

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

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

24

1 G. If exemplary or punitive damages are awarded in an action
2 for personal injury or injury to personal rights including, but not
3 limited to, injury resulting from bodily restraint, personal insult,
4 defamation, invasion of privacy, injury to personal relations, or
5 detriment due to an act or omission of another, the interest on that
6 award shall begin to accrue from the earlier of the date the
7 judgment is rendered as expressly stated in the judgment, or the
8 date the judgment is filed with the court clerk.

9 H. If a judgment is rendered establishing the existence of a
10 lien against property and no rate of interest exists, the court
11 shall allow prejudgment interest at a rate prescribed pursuant to
12 subsection I of this section from the date the lien is filed to the
13 date of verdict.

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

1 Courts by the State Treasurer on the first regular business day in
2 January of each year.

3 J. For purposes of computing postjudgment interest, the
4 provisions of this section shall be applicable to all judgments of
5 the district courts rendered on or after January 1, 2005. Effective
6 January 1, 2005, the method for computing postjudgment interest
7 prescribed by this section shall be applicable to all judgments
8 remaining unpaid rendered prior to January 1, 2005.

9 K. For purposes of computing prejudgment interest, the
10 provisions of this section shall be applicable to all actions which
11 are filed in the district courts on or after January 1, 2010, for
12 which an award of prejudgment interest is authorized by the
13 provisions of this section.

14 SECTION 3. This act shall become effective November 1, 2025.
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16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY
17 OVERSIGHT, dated 03/04/2025 - DO PASS, As Amended and Coauthored.
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