

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 58th Legislature (2021)

4 HOUSE BILL 2509

                                  By: Kannady

7                                   AS INTRODUCED

8                   An Act relating to civil procedure; amending 12 O.S.  
9                   2011, Section 2012, which relates to defenses and  
10                  objections; clarifying procedure for default  
                                  judgment; and providing an effective date.

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

14           SECTION 1.           AMENDATORY           12 O.S. 2011, Section 2012, is  
15 amended to read as follows:

16                           DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED;

17   BY PLEADING OR MOTION

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

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

22                   b.   within twenty (20) days after the service of the  
23                           summons and petition upon the defendant, or within the  
24                           last day for answering if applicable; provided, a

1 defendant may file a reservation of time which shall  
2 extend the time to respond twenty (20) days from the  
3 last date for answering. The filing of such a  
4 reservation of time waives defenses of paragraphs 2,  
5 3, 4, 5, 6, and 9 of subsection B of this section.

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

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

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

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

23 B. HOW PRESENTED. Every defense, in law or fact, to a claim  
24 for relief in any pleading, whether a claim, counterclaim, cross-

1 claim, or third-party claim, shall be asserted in the responsive  
2 pleading thereto if one is required, except that the following  
3 defenses may at the option of the pleader be made by motion:

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

15 A motion making any of these defenses shall be made before pleading  
16 if a further pleading is permitted. No defense or objection is  
17 waived by being joined with one or more other defenses or objections  
18 in a responsive pleading or motion. If a pleading sets forth a  
19 claim for relief to which the adverse party is not required to serve  
20 a responsive pleading, the adverse party may assert at the trial any  
21 defense in law or fact to that claim for relief. If, on a motion  
22 asserting the defense numbered 6 of this subsection to dismiss for  
23 failure of the pleading to state a claim upon which relief can be  
24 granted, matters outside the pleading are presented to and not

1 excluded by the court, the motion shall be treated as one for  
2 summary judgment and all parties shall be given reasonable  
3 opportunity to present all material made pertinent to the motion by  
4 the rules for summary judgment. A motion to dismiss for failure to  
5 state a claim upon which relief can be granted shall separately  
6 state each omission or defect in the petition, and a motion that  
7 does not specify such defects or omissions shall be denied without a  
8 hearing and the defendant shall answer within twenty (20) days after  
9 notice of the court's action.

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

20 D. MOTION TO STRIKE. Upon motion made by a party before  
21 responding to a pleading or, if no responsive pleading is permitted  
22 by this act, upon motion made by a party within twenty (20) days  
23 after the service of the pleading upon the party or upon the court's  
24 own initiative at any time, the court may order stricken from any

1 pleading any insufficient defense. If, on a motion to strike an  
2 insufficient defense, matters outside the pleadings are presented to  
3 and not excluded by the court, the motion shall be treated as one  
4 for partial summary judgment and all parties shall be given  
5 reasonable opportunity to present all materials made pertinent to  
6 the motion by the rules for summary judgment.

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

19 F. WAIVER OR PRESERVATION OF CERTAIN DEFENSES.

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

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- 1           a.    if omitted from a motion that raises any of the  
2                    defenses or objections which this section permits to  
3                    be raised by motion, or  
4           b.    if it is not made by motion and it is not included in  
5                    a responsive pleading or an amendment thereof  
6                    permitted by subsection A of Section 2015 of this  
7                    title to be made as a matter of course. A motion to  
8                    strike an insufficient defense is waived if not raised  
9                    as in subsection D of this section.

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

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

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

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

12 H. MOTION FOR DEFAULT JUDGMENT NOT REQUIRED IF DEFENDANT FAILS  
13 TO FILE RESPONSE. Nothing in any provision of this title or in any  
14 court rule shall be construed to require a motion for default  
15 judgment, with or without notice, if after service of summons and  
16 petition, a defendant fails to file with the court clerk an  
17 appearance, answer, motion, pleading, or response. Contact or  
18 communication with the plaintiff or attorney of the plaintiff shall  
19 not constitute an appearance unless the contact or communication is  
20 also filed by the defaulting party in writing with the court clerk.

21 SECTION 2. This act shall become effective November 1, 2021.

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23 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated  
24 02/10/2021 - DO PASS.