

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 2509

By: Kannady

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6 AS INTRODUCED

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

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

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

15 DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED;

16 BY PLEADING OR MOTION

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

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

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

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

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

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

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

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

22 B. HOW PRESENTED. Every defense, in law or fact, to a claim
23 for relief in any pleading, whether a claim, counterclaim, cross-
24 claim, or third-party claim, shall be asserted in the responsive

1 pleading thereto if one is required, except that the following
2 defenses may at the option of the pleader be made by motion:

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

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

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

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

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

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

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

18 F. WAIVER OR PRESERVATION OF CERTAIN DEFENSES.

19 1. A defense of lack of jurisdiction over the person, improper
20 venue, insufficiency of process, insufficiency of service of
21 process, failure to state a claim upon which relief can be granted,
22 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 58-1-7006 AQH 12/14/20

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