

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 HOUSE BILL 2372

By: Kannady

7 AS INTRODUCED

8 An Act relating to civil procedure; amending 12 O.S.
9 2021, Section 2012, which relates to defenses and
10 objections; clarifying procedure for default
11 judgment; updating references; amending 12 O.S. 2021,
12 Section 727.1, which relates to postjudgment
13 interest; clarifying application of interest; and
14 providing an effective date.

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

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

17 Section 2012. A. WHEN PRESENTED. 1. Unless a different time
18 is prescribed 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~~ counterclaim or cross-claim may elect to have the
14 answer served within thirty-five (35) days in lieu of the twenty
15 (20) days set 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
15 pleading if a further pleading is permitted. No defense or
16 objection is waived by being joined with one or more other defenses
17 or objections in a responsive pleading or motion. If a pleading
18 sets forth a claim for relief to which the adverse party is not
19 required to serve a responsive pleading, the adverse party may
20 assert at the trial any defense in law or fact to that claim for
21 relief. If, on a motion asserting the defense numbered in paragraph
22 6 of this subsection to dismiss for failure of the pleading to state
23 a claim upon which relief can be granted, matters outside the
24 pleading are presented to and not excluded by the court, the motion

1 shall be treated as one for summary judgment and all parties shall
2 be given reasonable opportunity to present all material made
3 pertinent to the motion by the rules for summary judgment. A motion
4 to dismiss for failure to state a claim upon which relief can be
5 granted shall separately state each omission or defect in the
6 petition, and a motion that does not specify such defects or
7 omissions shall be denied without a hearing and the defendant shall
8 answer within twenty (20) days after 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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24

- 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 local or district court rule shall be construed to require either a
15 motion or a hearing for default judgment, and no notice shall be
16 necessary, if, after service of summons and petition, a defendant
17 fails to timely file with the court clerk within twenty (20) days a
18 written appearance, answer, motion, pleading, or response as
19 provided in subsection A of this section. Contact or communication
20 with the plaintiff or attorney of the plaintiff shall not constitute
21 an appearance, answer, motion, pleading, or response unless the
22 contact or communication is in writing and is also timely filed by
23 the defendant in writing with the court clerk as provided in
24 subsection A of this section. The provisions of this subsection

1 shall not be construed to prevent an evidentiary hearing concerning
2 the amount of damages to be awarded.

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

5 Section 727.1 A. 1. Except as otherwise provided by this
6 section, all judgments of courts of record, including costs and
7 attorney fees authorized by statute or otherwise and allowed by the
8 court, shall bear interest at a rate prescribed pursuant to this
9 section. Such interest shall also apply to the amounts collected on
10 any judgment enforced during the pendency of an appeal which is
11 subsequently overturned on appeal when restitution is paid to the
12 defendant.

13 2. Costs and attorney fees allowed by the court shall bear
14 interest from the earlier of the date the judgment or order is
15 pronounced, if expressly stated in the written judgment or order
16 awarding the costs and attorney fees, or the date the judgment or
17 order is filed with the court clerk.

18 B. Judgments, including costs and attorney fees authorized by
19 statute or otherwise and allowed by the court, against this state or
20 its political subdivisions, including counties, municipalities,
21 school districts, and public trusts of which this state or a
22 political subdivision of this state is a beneficiary, shall bear
23 interest during the term of judgment at a rate prescribed pursuant
24 to this section from the date of rendition. No judgment against

1 this state or its political subdivisions, including counties,
2 municipalities, school districts, and public trusts of which this
3 state or a political subdivision of this state is a beneficiary,
4 inclusive of postjudgment interest, shall exceed the total amount of
5 liability of the governmental entity pursuant to The Governmental
6 Tort Claims Act.

7 C. The postjudgment interest authorized by subsection A or
8 subsection B of this section shall accrue from the earlier of the
9 date the judgment is rendered as expressly stated in the judgment,
10 or the date the judgment is filed with the court clerk, and shall
11 initially accrue at the rate in effect for the calendar year during
12 which the judgment is rendered until the end of the calendar year in
13 which the judgment was rendered, or until the judgment is paid,
14 whichever first occurs. Beginning on January 1 of the next
15 succeeding calendar year until the end of that calendar year, or
16 until the judgment is paid, whichever first occurs, the judgment,
17 together with postjudgment interest previously accrued, shall bear
18 interest at the rate in effect for judgments rendered during that
19 calendar year as certified by the Administrative Director of the
20 Courts pursuant to subsection I of this section. For each
21 succeeding calendar year, or part of a calendar year, during which a
22 judgment remains unpaid, the judgment, together with postjudgment
23 interest previously accrued, shall bear interest at the rate in
24 effect for judgments rendered during that calendar year as certified

1 by the Administrative Director of the Courts pursuant to subsection
2 I of this section. A separate computation using the interest rate
3 in effect for judgments as provided by subsection I of this section
4 shall be made for each calendar year, or part of a calendar year,
5 during which the judgment remains unpaid in order to determine the
6 total amount of interest for which the judgment debtor is liable.
7 The postjudgment interest rate for each calendar year or part of a
8 calendar year a judgment remains unpaid shall be multiplied by the
9 original amount of the judgment, including any prejudgment interest,
10 together with postjudgment interest previously accrued. Interest
11 shall accrue on a judgment in the manner prescribed by this
12 subsection until the judgment is satisfied or released.

13 D. If a rate of interest is specified in a contract, the rate
14 specified shall apply and be stated in the journal entry of
15 judgment. The rate of interest shall not exceed the lawful rate for
16 that obligation. Postjudgment interest shall be calculated at the
17 contractual rate and accrued in the same manner as prescribed in
18 subsection C of this section.

19 PREJUDGMENT INTEREST

20 E. Except as provided by subsection F of this section,
21 beginning November 1, 2009, if a verdict for damages by reason of
22 personal injuries or injury to personal rights including, but not
23 limited to, injury resulting from bodily restraint, personal insult,
24 defamation, invasion of privacy, injury to personal relations, or

1 detriment due to an act or omission of another is accepted by the
2 trial court, the court in rendering judgment shall add interest on
3 the verdict at a rate prescribed pursuant to subsection I of this
4 section from the date which is twenty-four (24) months after the
5 suit resulting in the judgment was commenced to the earlier of the
6 date the verdict is accepted by the trial court as expressly stated
7 in the judgment, or the date the judgment is filed with the court
8 clerk. No prejudgment interest shall begin to accrue until twenty-
9 four (24) months after the suit resulting in the judgment was
10 commenced. The interest rate for computation of prejudgment
11 interest shall begin with the rate prescribed by subsection I of
12 this section which is in effect for the calendar year which is
13 twenty-four (24) months after the suit resulting in the judgment was
14 commenced. This rate shall be in effect until the end of the
15 calendar year in which interest begins to accrue or until the date
16 judgment is filed, whichever first occurs. Beginning on January 1
17 of the next succeeding calendar year until the end of that calendar
18 year, or until the date the judgment is filed, whichever first
19 occurs, and for each succeeding calendar year thereafter, the
20 prejudgment interest rate shall be the rate in effect for judgments
21 rendered during each calendar year as certified by the
22 Administrative Director of the Courts pursuant to subsection I of
23 this section. After the computation of all prejudgment interest has
24 been completed, the total amount of prejudgment interest shall be

1 added to the amount of the judgment rendered pursuant to the trial
2 of the action, and the total amount of the resulting judgment shall
3 become the amount upon which postjudgment interest is computed
4 pursuant to subsection A of this section.

5 F. If a verdict of the type described by subsection E of this
6 section is rendered against this state or its political
7 subdivisions, including counties, municipalities, school districts,
8 and public trusts of which this state or a political subdivision of
9 this state is a beneficiary, the judgment shall bear interest at the
10 rate prescribed pursuant to subsection I of this section from the
11 date the suit was commenced to the earlier of the date the verdict
12 is accepted by the trial court as expressly stated in the judgment
13 or the date the judgment is filed with the court clerk. The
14 interest rate for computation of prejudgment interest shall begin
15 with the rate prescribed by subsection I of this section which is in
16 effect for the calendar year in which the suit resulting in the
17 judgment is commenced. This rate shall be in effect until the end
18 of the calendar year in which the suit resulting in judgment was
19 filed or until the date the judgment is rendered as expressly stated
20 in the judgment, whichever first occurs. Beginning on January 1 of
21 the next succeeding calendar year until the end of that calendar
22 year, or until the date judgment is rendered, whichever first
23 occurs, and for each succeeding calendar year thereafter, the
24 prejudgment interest rate shall be the rate in effect for judgments

1 rendered during each calendar year as certified by the
2 Administrative Director of the Courts pursuant to subsection I of
3 this section. After the computation of prejudgment interest has
4 been completed, the amount shall be added to the amount of the
5 judgment rendered pursuant to the trial of the action, and the total
6 amount of the resulting judgment shall become the amount upon which
7 postjudgment interest is computed pursuant to subsection B of this
8 section. No award of prejudgment interest against this state or its
9 political subdivisions, including counties, municipalities, school
10 districts, and public trusts of which this state or a political
11 subdivision of this state is a beneficiary, including the amount of
12 the judgment awarded pursuant to trial of the action, shall exceed
13 the total amount of liability of the governmental entity pursuant to
14 The Governmental Tort Claims Act.

15 G. If exemplary or punitive damages are awarded in an action
16 for personal injury or injury to personal rights including, but not
17 limited to, injury resulting from bodily restraint, personal insult,
18 defamation, invasion of privacy, injury to personal relations, or
19 detriment due to an act or omission of another, the interest on that
20 award shall begin to accrue from the earlier of the date the
21 judgment is rendered as expressly stated in the judgment, or the
22 date the judgment is filed with the court clerk.

23 H. If a judgment is rendered establishing the existence of a
24 lien against property and no rate of interest exists, the court

1 shall allow prejudgment interest at a rate prescribed pursuant to
2 subsection I of this section from the date the lien is filed to the
3 date of verdict.

4 I. For purposes of computing postjudgment interest as
5 authorized by this section, interest shall be the prime rate, as
6 listed in the first edition of the Wall Street Journal published for
7 each calendar year and as certified to the Administrative Director
8 of the Courts by the State Treasurer on the first regular business
9 day following publication in January of each year, plus two percent
10 (2%). For purposes of computing prejudgment interest as authorized
11 by this section, interest shall be determined using a rate equal to
12 the average United States Treasury Bill rate of the preceding
13 calendar year as certified to the Administrative Director of the
14 Courts by the State Treasurer on the first regular business day in
15 January of each year.

16 J. For purposes of computing postjudgment interest, the
17 provisions of this section shall be applicable to all judgments of
18 the district courts rendered on or after January 1, 2005. Effective
19 January 1, 2005, the method for computing postjudgment interest
20 prescribed by this section shall be applicable to all judgments
21 remaining unpaid rendered prior to January 1, 2005.

22 K. For purposes of computing prejudgment interest, the
23 provisions of this section shall be applicable to all actions which
24 are filed in the district courts on or after January 1, 2010, for

1 which an award of prejudgment interest is authorized by the
2 provisions of this section.

3 SECTION 3. This act shall become effective November 1, 2023.
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5 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated
6 02/09/2023 - DO PASS.
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