

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 365

By: Holt

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5  
6 AS INTRODUCED

7 An Act relating to the Oklahoma Pleading Code;  
8 amending 12 O.S. 2011, Sections 2001, 2008, as last  
9 amended by Section 3, Chapter 9, 1st Ex. Sess. O.S.L.  
10 2013, 2009, as last amended by Section 5, Chapter 9,  
11 1st Ex. Sess., O.S.L. 2013 and 2012 (12 O.S. Supp.  
12 2016, Sections 2008 and 2009), which relate to scope,  
13 general rules, special matters, defenses and  
14 objections; clarifying scope of Pleading Code;  
15 clarifying requirement for certain claims and  
16 averments; defining term; requiring stay of  
17 proceedings under certain circumstances; providing  
18 exception; and providing an effective date.

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

20 SECTION 1. AMENDATORY 12 O.S. 2011, Section 2001, is  
21 amended to read as follows:

22 Section 2001.

23 SCOPE OF THE OKLAHOMA PLEADING CODE

24 The Oklahoma Pleading Code governs the procedure in the district  
courts of Oklahoma in all suits of a civil nature whether cognizable  
as cases at law or in equity except where a statute specifies a  
different procedure. It shall be construed, administered and  
employed by the court and the parties to secure the just, speedy,

1 and inexpensive determination of every action. The provisions of  
2 Sections 1 through 2027 of this title may be cited as the "Oklahoma  
3 Pleading Code". Section captions are part of this act.

4 SECTION 2. AMENDATORY 12 O.S. 2011, Section 2008, as  
5 last amended by Section 3, Chapter 9, 1st Ex. Sess., O.S.L. 2013 (12  
6 O.S. Supp. 2016, Section 2008), is amended to read as follows:

7 Section 2008.

8 GENERAL RULES OF PLEADING

9 A. CLAIMS FOR RELIEF. A pleading which sets forth a claim for  
10 relief, whether an original claim, counterclaim, cross-claim or  
11 third-party claim, shall contain:

12 1. A short and plain statement, made with particularity of all  
13 material facts known to the pleading party that support the claim,  
14 that creates a reasonable inference showing that the pleader is  
15 plausibly entitled to relief. For the purposes of this paragraph, a  
16 material fact is a fact that is necessary to the claim and without  
17 which the claim could not be supported. As to facts pleaded on  
18 belief, the pleading party shall set forth with particularity the  
19 factual information supporting the pleading party's belief; and

20 2. A demand for judgment for the relief to which he deems  
21 himself entitled. Every pleading demanding relief for damages in  
22 money in excess of the amount required for diversity jurisdiction  
23 pursuant to Section 1332 of Title 28 of the United States Code  
24 shall, without demanding any specific amount of money, set forth

1 only that the amount sought as damages is in excess of the amount  
2 required for diversity jurisdiction pursuant to Section 1332 of  
3 Title 28 of the United States Code, except in actions sounding in  
4 contract. Every pleading demanding relief for damages in money in  
5 an amount that is required for diversity jurisdiction pursuant to  
6 Section 1332 of Title 28 of the United States Code or less shall  
7 specify the amount of such damages sought to be recovered. Relief  
8 in the alternative or of several different types may be demanded.

9 B. DEFENSES; FORM OF DENIALS. A party shall state in short and  
10 plain terms his defenses to each claim asserted and shall admit or  
11 deny the averments upon which the adverse party relies. If he is  
12 without knowledge or information sufficient to form a belief as to  
13 the truth of an averment, he shall so state and this statement has  
14 the effect of a denial. Denials shall fairly meet the substance of  
15 the averments denied. When a pleader intends in good faith to deny  
16 only a part or a qualification of an averment, he shall specify so  
17 much of it as is true and material and shall deny only the  
18 remainder. Unless the pleader intends in good faith to controvert  
19 all the averments of the preceding pleading, he may make his denials  
20 as specific denials of designated averments or paragraphs or he may  
21 generally deny all the averments except such designated averments or  
22 paragraphs as he expressly admits; but, when he does so intend to  
23 controvert all its averments, he may do so by general denial subject  
24 to the obligations set forth in Section 2011 of this title.

1 C. AFFIRMATIVE DEFENSES. In pleading to a preceding pleading,  
2 a party shall set forth affirmatively:

- 3 1. Accord and satisfaction;
- 4 2. Arbitration and award;
- 5 3. Assumption of risk;
- 6 4. Contributory negligence;
- 7 5. Discharge in bankruptcy;
- 8 6. Duress;
- 9 7. Estoppel;
- 10 8. Failure of consideration;
- 11 9. Fraud;
- 12 10. Illegality;
- 13 11. Injury by fellow servant;
- 14 12. Laches;
- 15 13. License;
- 16 14. Payment;
- 17 15. Release;
- 18 16. Res judicata;
- 19 17. Statute of frauds;
- 20 18. Statute of limitations;
- 21 19. Waiver; and
- 22 20. Any other matter constituting an avoidance or affirmative  
23 defense.

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1           When a party has mistakenly designated a defense as a  
2 counterclaim or a counterclaim as a defense, the court on terms, if  
3 justice so requires, shall treat the pleading as if there had been a  
4 proper designation.

5           D.   EFFECT OF FAILURE TO DENY.   Averments in a pleading to which  
6 a responsive pleading is required, other than those as to the amount  
7 of damage, are admitted when not denied in the responsive pleading.  
8 Averments in a pleading to which no responsive pleading is required  
9 or permitted shall be taken as denied or avoided.

10           E.   ~~PLEADING TO BE CONCISE AND DIRECT~~ ALTERNATIVE STATEMENTS;  
11 CONSISTENCY INCONSISTENCY.

12           ~~1. Each averment of a pleading shall be simple, concise, and~~  
13 ~~direct. No technical forms of pleadings or motions are required.~~

14           ~~2.~~ A party may set forth, and at trial rely on, two or more  
15 statements of a claim or defense alternately or hypothetically,  
16 either in one count or defense or in separate counts or defenses.  
17 When two or more statements are made in the alternative and one of  
18 them if made independently would be sufficient, the pleading is not  
19 made insufficient by the insufficiency of one or more of the  
20 alternative statements. A party may also state as many separate  
21 claims or defenses as he has regardless of consistency and whether  
22 based on legal or equitable grounds. All statements shall be made  
23 subject to the obligations set forth in Section 2011 of this title.

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1 F. CONSTRUCTION OF PLEADINGS. All pleadings shall be so  
2 construed as to do substantial justice.

3 SECTION 3. AMENDATORY 12 O.S. 2011, Section 2009, as  
4 last amended by Section 5, Chapter 9, 1st Ex. Sess., O.S.L. 2013 (12  
5 O.S. Supp. 2016, Section 2009), is amended to read as follows:

6 Section 2009.

7 PLEADING SPECIAL MATTERS

8 A. CAPACITY. It is not necessary to aver the capacity of a  
9 party to sue or be sued or the authority of a party to sue or be  
10 sued in a representative capacity or the legal existence of an  
11 organized association of persons that is made a party. When a party  
12 desires to raise an issue as to the legal existence of any party or  
13 the capacity of any party to sue or be sued or the authority of a  
14 party to sue or be sued in a representative capacity, he shall do so  
15 by negative averment, which shall include such supporting  
16 particulars as are peculiarly within the pleader's knowledge, and he  
17 shall have the burden of proof on that issue.

18 B. FRAUD, MISTAKE, CONDITION OF THE MIND. In accordance with  
19 paragraph 1 of subsection A of Section 2008 of this title, in all  
20 averments of fraud or mistake, the circumstances constituting fraud  
21 or mistake shall be stated with particularity. Malice, intent,  
22 knowledge, and other condition of mind of a person may be averred  
23 generally.

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1 C. CONDITIONS PRECEDENT. In pleading the performance or  
2 occurrence of conditions precedent, if the pleading otherwise  
3 satisfies the requirements of paragraph 1 of subsection A of Section  
4 2008 of this title, it is sufficient to aver generally that all  
5 conditions precedent have been performed or have occurred. A denial  
6 of performance or occurrence shall be made specifically and with  
7 particularity.

8 D. OFFICIAL DOCUMENT OR ACT. In pleading an official document  
9 or official act it is sufficient to aver that the document was  
10 issued or the act done in compliance with law.

11 E. JUDGMENT. In pleading a judgment or decision of a domestic  
12 or foreign court, judicial or quasi-judicial tribunal, or of a board  
13 or officer, it is sufficient to aver the judgment or decision  
14 without setting forth matter showing jurisdiction to render it.

15 F. TIME AND PLACE. For the purpose of testing the sufficiency  
16 of a pleading, averments of time and place are material and shall be  
17 considered like all other averments of material matter.

18 G. SPECIAL DAMAGE. When items of special damage are claimed,  
19 their nature shall be specifically stated. In actions where  
20 exemplary or punitive damages are sought, the petition shall not  
21 state a dollar amount for damages sought to be recovered but shall  
22 state whether the amount of damages sought to be recovered is in  
23 excess of or not in excess of the amount required for diversity  
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1 jurisdiction pursuant to Section 1332 of Title 28 of the United  
2 States Code.

3 H. MOTION TO CLARIFY DAMAGES. If the amount of damages sought  
4 to be recovered by the plaintiff is less than the amount required  
5 for diversity jurisdiction pursuant to Section 1332 of Title 28 of  
6 the United States Code, the defendant may file, for purposes of  
7 establishing diversity jurisdiction only, a Motion to Clarify  
8 Damages prior to the pretrial order to require the plaintiff to show  
9 by a preponderance of the evidence that the amount of damages, if  
10 awarded, will not exceed the amount required for diversity. If the  
11 court finds that any damages awarded are more likely than not to  
12 exceed the amount of damages required for diversity jurisdiction,  
13 the plaintiff shall amend his or her pleadings in conformance with  
14 paragraph 2 of subsection A of Section 2008 of this title.

15 SECTION 4. AMENDATORY 12 O.S. 2011, Section 2012, is  
16 amended to read as follows:

17 Section 2012.

18 DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED;

19 BY PLEADING OR MOTION

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

22 a. within twenty (20) days after the service of the  
23 summons and petition upon the defendant,  
24



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 or cross-claim may elect to have the answer served  
18           within thirty-five (35) days in lieu of the twenty (20) days set  
19           forth in this section.

20           5.    a.    ~~The~~ the service of a motion permitted under this  
21                section or a motion for summary judgment alters these  
22                periods of time as follows: if the court denies the  
23                motion or postpones its disposition until the trial on  
24                the merits, the responsive pleading shall be served

1 within twenty (20) days after notice of the court's  
2 action, unless a different time is fixed by order of  
3 the court.

4 b. upon the filing of a motion to dismiss under paragraph  
5 6 of subsection B of this section, a motion for  
6 judgment on the pleadings or a motion for more  
7 definite statement, all discovery and other  
8 proceedings shall be stayed during the pendency of  
9 such motion unless the court finds, upon motion of any  
10 party, that particularized discovery is necessary to  
11 preserve evidence or to prevent undue prejudice to  
12 that party.

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

- 18 1. Lack of jurisdiction over the subject matter;
- 19 2. Lack of jurisdiction over the person;
- 20 3. Improper venue;
- 21 4. Insufficiency of process;
- 22 5. Insufficiency of service of process;
- 23 6. Failure to state a claim upon which relief can be granted;
- 24 7. Failure to join a party under Section 2019 of this title;

- 1 8. Another action pending between the same parties for the same
- 2 claim;
- 3 9. Lack of capacity of a party to be sued; and
- 4 10. Lack of capacity of a party to sue.

5 A motion making any of these defenses shall be made before pleading  
6 if a further pleading is permitted. No defense or objection is  
7 waived by being joined with one or more other defenses or objections  
8 in a responsive pleading or motion. If a pleading sets forth a  
9 claim for relief to which the adverse party is not required to serve  
10 a responsive pleading, the adverse party may assert at the trial any  
11 defense in law or fact to that claim for relief. If, on a motion  
12 asserting the defense numbered 6 of this subsection to dismiss for  
13 failure of the pleading to state a claim upon which relief can be  
14 granted, matters outside the pleading are presented to and not  
15 excluded by the court, the motion shall be treated as one for  
16 summary judgment and all parties shall be given reasonable  
17 opportunity to present all material made pertinent to the motion by  
18 the rules for summary judgment. A motion to dismiss for failure to  
19 state a claim upon which relief can be granted shall separately  
20 state each omission or defect in the petition, and a motion that  
21 does not specify such defects or omissions shall be denied without a  
22 hearing and the defendant shall answer within twenty (20) days after  
23 notice of the court's action.

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

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

22 E. CONSOLIDATION OF DEFENSES IN MOTION. A party who makes a  
23 motion under this section may join with it any other motions herein  
24 provided for and then available to the party. If a party makes a

1 motion under this section but omits therefrom any defense or  
2 objection then available to the party which this section permits to  
3 be raised by motion, the party shall not thereafter make a motion  
4 based on the defense or objection so omitted, except a motion as  
5 provided in paragraph 2 of subsection F of this section on the  
6 grounds there stated. The court in its discretion may permit a  
7 party to amend a motion by stating additional defenses or objections  
8 if an amendment is sought at least five (5) days before the hearing  
9 on the motion.

10 F. WAIVER OR PRESERVATION OF CERTAIN DEFENSES.

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

- 15 a. if omitted from a motion that raises any of the  
16 defenses or objections which this section permits to  
17 be raised by motion, or  
18 b. if it is not made by motion and it is not included in  
19 a responsive pleading or an amendment thereof  
20 permitted by subsection A of Section 2015 of this  
21 title to be made as a matter of course. A motion to  
22 strike an insufficient defense is waived if not raised  
23 as in subsection D of this section.

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1           2. A defense of failure to join a party indispensable under  
2 Section 2019 of this title may be made in any pleading permitted or  
3 ordered under subsection A of Section 2007 of this title or at the  
4 trial on the merits. A defense of another action pending between  
5 the same parties for the same claim or a defense of lack of capacity  
6 of a party to sue may be made in any pleading permitted or ordered  
7 pursuant to the provisions of subsection A of Section 2007 of this  
8 title or at the pretrial conference.

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

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

16           G. FINAL DISMISSAL ON FAILURE TO AMEND. On granting a motion  
17 to dismiss a claim for relief, the court shall grant leave to amend  
18 if the defect can be remedied and shall specify the time within  
19 which an amended pleading shall be filed. If the amended pleading  
20 is not filed within the time allowed, final judgment of dismissal  
21 with prejudice shall be entered on motion except in cases of  
22 excusable neglect. In such cases amendment shall be made by the  
23 party in default within a time specified by the court for filing an  
24 amended pleading. Within the time allowed by the court for filing

1 an amended pleading, a plaintiff may voluntarily dismiss the action  
2 without prejudice.

3 SECTION 5. This act shall become effective November 1, 2017.

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