

ENGROSSED SENATE
BILL NO. 1143

By: Smith of the Senate

and

Steidley of the House

An Act relating to fees; amending 22 O.S. 1991, Sections 718, as amended by Section 5, Chapter 227, O.S.L. 1993, and 722 (22 O.S. Supp. 1993, Section 718) and 28 O.S. 1991, Sections 81 and 82, as last amended by Section 6, Chapter 227, O.S.L. 1993 (28 O.S. Supp. 1993, Section 82), which relate to fees of witnesses and jurors; clarifying and conforming language relating to witness fees; raising witness fee of certain nonresident witnesses; providing procedures and guidelines for determining witness fees; providing for time of payment of witness fees; providing for payment of witness fees by certain parties seeking attendance of certain witnesses; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 718, as amended by Section 5, Chapter 227, O.S.L. 1993 (22 O.S. Supp. 1993, Section 718), is amended to read as follows:

Section 718. ~~A. Except as otherwise provided by Section 82 of Title 28 of the Oklahoma Statutes, all witnesses in a criminal action who appear pursuant to a subpoena shall be paid out of the court fund the fees and mileage prescribed by law. Upon conviction~~

~~of the defendant, said fees and mileage shall be taxed as costs, collected and deposited as other costs in the case.~~

~~B. Except as otherwise provided by Section 82 of Title 28 of the Oklahoma Statutes,~~ a A witness who appears from another state to testify in this state in a criminal case or proceeding pursuant to a subpoena issued in accordance with the provisions of the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings, Section 721 et seq. of this title, shall be reimbursed from the court fund of the court where prosecution is pending for travel and expenses at rates not to exceed those prescribed by law for reimbursement of state employees traveling interstate. Upon conviction, such fees and mileage shall be taxed as costs, collected and deposited as other costs in the case.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 722, is amended to read as follows:

Section 722. A. If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

B. If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of

the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, (and of any other state through which the witness may be required to pass by ordinary course of travel), will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

C. If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

D. If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the greater of the sum authorized by the law of the state to which the witness must travel or the sum of ~~ten cents (\$0.10)~~ fifteen cents (\$0.15) a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and ~~Five Dollars (\$5.00)~~ Twelve Dollars (\$12.00) for each day, that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

SECTION 3. AMENDATORY 28 O.S. 1991, Section 81, is

amended to read as follows:

~~Section 81. Witnesses when subpoenaed, including witnesses who appear before a grand jury inobedience to a subpoena, shall receive the following fees:~~

~~1. For attending any court, before any judge, or commissioner of courts of record, less than sixty (60) miles from his residence, per day, Five Dollars (\$5.00);~~

~~2. For attending any court, before any judge, or commissioner of courts of record, more than sixty (60) miles from his residence, per day, Twelve Dollars (\$12.00); and~~

~~3. For any witness each mile actually and necessarily traveled in going to and returning from the place of attendance, fifteen cents (\$0.15); provided, that no mileage shall be allowed where the distance is less than one (1) mile.~~

A. Whenever, under the laws of this state, a person may be compelled by order, subpoena, or other lawful compulsion to appear as a witness, whether or not testimony or other evidence is actually adduced, the witness shall receive the following:

1. For a witness who appears from another state or foreign country in a criminal proceeding in this state, the amount specified in Section 718 of Title 22 of the Oklahoma Statutes;

2. For a witness who appears from this state in a criminal proceeding in another state, the amount specified in Section 722 of Title 22 of the Oklahoma Statutes;

3. For a witness who appears from this state pursuant to an order, subpoena, or other lawful means for compelling the appearance of the witness:

a. if attendance is required at a place less than sixty (60) miles from the residence of the witness, Five Dollars (\$5.00) for each day of attendance, plus fifteen cents (\$0.15) for each mile actually and

necessarily traveled in going to and returning from the place of attendance, or

- b. if attendance is required at a place more than sixty (60) miles from the residence of the witness, Twelve Dollars (\$12.00) for each day of attendance, plus fifteen cents (\$0.15) for each mile actually and necessarily traveled in going to and returning from the place of attendance.

B. In computing mileage allowances for witnesses, parts of a mile shall be rounded to the nearest whole number of miles. Where the total mileage actually and necessarily traveled is less than one and one-half miles, no mileage shall be allowed.

C. No witness shall receive per diem or mileage in more than one case covering the same period of time, or the same travel, and each witness shall be required to make oath that the fees claimed have not been claimed or received in any other case, and no juror while serving as a juror or party to a civil action shall receive ~~pay compensation~~ as a witness while serving as such juror.

D. The fees and expenses allowed by this section shall be paid as follows:

1. In civil cases, the fees for one day's attendance shall be paid pursuant to Section 2004.1 of Title 12 of the Oklahoma Statutes and fees for subsequent attendance shall be paid on the day before each additional day of attendance unless the witness agrees to another time for payment;

2. In criminal cases, the witness shall be paid at the conclusion of each day of attendance unless the witness agrees to another time for payment; or

3. In all other cases, the witness shall be paid at the conclusion of attendance unless the witness agrees to another time for payment.

E. Any error in computing the number of miles allowable shall not be sufficient grounds for failure to obey the order, subpoena, or other lawful compulsion if a per diem has been tendered to the witness.

SECTION 4. AMENDATORY 28 O.S. 1991, Section 82, as last amended by Section 6, Chapter 227, O.S.L. 1993 (28 O.S. Supp. 1993, Section 82), is amended to read as follows:

Section 82. A. Any witness ~~on behalf of the state~~ appearing in obedience to ~~a subpoena or order~~ an order, subpoena, or other lawful compulsion at any stage of a criminal case or proceeding, grand jury proceeding and in any civil case or proceeding ~~brought by the State of Oklahoma directly or on relation of~~ in which the party seeking the attendance of the witness is represented by the district attorney, ~~or by the board of county commissioners on behalf of the county,~~ shall be paid, from any monies available for the operations of the district attorney attorney's office in ~~such~~ the county where attendance is required, the fees and mileage at the rate prescribed by law.

B. ~~Except as otherwise provided by Section 1355.4 of Title 22 of the Oklahoma Statutes, any~~ Any witness ~~on behalf of an indigent defendant~~ appearing in obedience to ~~a subpoena or order~~ an order, subpoena, or other lawful compulsion at any stage of a criminal case or proceeding ~~brought by the State of Oklahoma directly or on relation of the district attorney~~ in which the party seeking the attendance of the witness is represented by the Indigent Defense System or its agent shall be paid from ~~the court fund. The court clerk shall report the amount of witness fees paid pursuant to this subsection in conjunction with the quarterly report required by~~ Section 1307 of Title 20 of the Oklahoma Statutes funds available for expenditure by the Indigent Defense System.

C. Any witness appearing in obedience to an order, subpoena, or other lawful compulsion in an administrative proceeding, medicaid

fraud investigation, or multicounty grand jury proceeding shall be paid by the party seeking the attendance of the witness. If the party seeking the attendance is the Attorney General or represented by the Attorney General, the witness shall be paid from funds available for expenditure by the Attorney General. If an administrative agency seeking the attendance of the witness is not represented by the Attorney General, the witness shall be paid from funds available for expenditure by the administrative agency.

D. Any witness appearing in obedience to an order, subpoena, or other lawful compulsion issued by a court of this state for which no provision of this section is applicable, shall be paid in the discretion of the court from funds which are subject to the court's orders.

E. Upon ~~conviction~~ conclusion of the proceedings, such fees and mileage shall be taxed as costs in the case, and collected and deposited as other costs in the case. ~~The court clerk shall report the total amount of monies collected pursuant to this subsection and Section 718 of Title 22 of the Oklahoma Statutes in conjunction with the quarterly report required by Section 1307 of Title 20 of the Oklahoma Statutes.~~

SECTION 5. This act shall become effective September 1, 1994.

Passed the Senate the 23rd day of February, 1994.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1994.

Speaker of the House of Representatives

