

SHORT TITLE: Civil procedure; requiring movant file certain petition for transfer from small claims docket within certain time; effective date.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 1070

By: Smith

AS INTRODUCED

An Act relating to civil procedure; amending 12 O.S. 1991, Sections 1757, as amended by Section 2, Chapter 210, O.S.L. 1993 and 1759 (12 O.S. Supp. 1993, Section 1757), which relate to transfer of small claims actions; requiring movant file certain petition for transfer within certain time; authorizing sanctions under certain circumstances; requiring deposit of certain court costs before certain transfer; modifying language; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 1757, as amended by Section 2, Chapter 210, O.S.L. 1993 (12 O.S. Supp. 1993, Section 1757), is amended to read as follows:

Section 1757. A. On motion of the defendant, a small claims action may, in the discretion of the court, be transferred from the small claims docket to another docket of the court; provided, that the motion is filed and notice is given by the defendant to the opposing party or parties by mailing a copy of the motion at least forty-eight (48) hours prior to the time fixed in the order for defendant to appear or answer; and provided further, that the defendant deposit the sum of Fifty Dollars (\$50.00) as the court cost.

B. The motion shall be heard at the time fixed in the order and consideration shall be given to any hardship on the plaintiff, complexity of the case, reason for transfer, and other relevant matters. If the motion is denied, the action shall remain on the small claims docket. If the motion is granted, the defendant as movant shall present and the court shall cause to be filed an order on a form prepared by the Administrative Office of the Courts transferring the action from the small claims docket to another docket, and thereafter the action shall proceed and be subject to the same costs as other civil actions and shall not proceed under the small claims procedure.

~~C. Within twenty (20) days of the date the transfer order is signed, the plaintiff shall file a petition that conforms to the standards of pleadings prescribed by the Oklahoma Pleading Code~~ the movant shall file a petition that conforms to the standards for pleadings prescribed by the Oklahoma Pleading Code, Section 2001 et seq. of this title, in the civil division of the court within twenty (20) days of the filing of the order of transfer. If the action is not filed on the civil docket pursuant to the transfer order by the movant within twenty (20) days, it shall be reinstated upon the small claims docket upon motion of the small claims plaintiff for further proceedings in the action which, in the court's discretion, may include sanctions, and no further transfer shall be authorized. Before the transfer is effected, the movant shall deposit with the clerk the court costs that are charged in other civil cases under Sections 151 through 157 of Title 28 of the Oklahoma Statutes, less any sums that have already been paid to the clerk. After this filing, the costs and other procedural matters shall be governed as in other civil actions, and not under small claims procedure.

C. The answer of the defendant shall be due within twenty (20) days after the filing of the petition and the reply of the plaintiff in ten (10) days after the answer is filed. If the plaintiff

ultimately prevails in the action so transferred by the defendant, a reasonable attorney's fee shall be allowed to plaintiff's attorney to be taxed as costs in the case, in addition to any sanctions which the court may deem appropriate.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 1759, is amended to read as follows:

Section 1759. If a claim, a counterclaim, or a setoff is filed for an amount in excess of Two Thousand Five Hundred Dollars (\$2,500.00), the action shall be transferred to another docket of the district court unless both parties agree in writing and file said agreement with the papers in the action that said claim, counterclaim, or setoff shall be tried under the small claims procedure. If such an agreement has not been filed, a judgment in excess of Two Thousand Five Hundred Dollars (\$2,500.00) may not be enforced for the part that exceeds Two Thousand Five Hundred Dollars (\$2,500.00). If the action is transferred to another docket of the district court, the person whose claim exceeded Two Thousand Five Hundred Dollars (\$2,500.00) shall deposit with the clerk the court costs ~~that are charged in other cases, less any sums that have been already paid to the clerk, or his claim shall be dismissed and the remaining claims, if any, shall proceed under the small claims procedure~~ as provided by Section 1757 of this title.

SECTION 3. This act shall become effective September 1, 1994.

44-2-1737 KS