

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1484

By: Graves

AS INTRODUCED

An Act relating to civil procedure; amending 12 O.S. 1991, Sections 1757, as last amended by Section 9, Chapter 343, O.S.L. 1994 and 1759 (12 O.S. Supp. 1994, Section 1757), which relate to small claims procedure; modifying circumstances pursuant to which discretionary transfers allowed; prohibiting transfers if counterclaim not filed within certain period; prohibiting transfer of cases involving certain claims of specified dollar amount for failure to file counterclaim within certain period; 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 last amended by Section 9, Chapter 343, O.S.L. 1994 (12 O.S. Supp. 1994, Section 1757), is amended to read as follows:

Section 1757. A. ~~On~~ Except for actions in which a counterclaim is not filed within the period prescribed by Section 1758 of this title, 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 within ten (10) days 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. If the transfer order is not filed by the movant within ten (10) days, it shall be reinstated upon the small claims docket upon motion of the small claims plaintiff, 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. 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 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. Except as provided by subsection B of this section, 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.

B. If a defendant does not file a counterclaim within the period prescribed by Section 1758 of this title, the action shall not be transferred to another docket of the district court.

SECTION 3. This act shall become effective November 1, 1995.

45-1-6047

MAH