

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1387

By: Herbert

AS INTRODUCED

An Act relating to civil procedure; amending 12 O.S. 2001, Sections 1148.10 and 1148.10A, which relate to writs of execution; updating language; making language gender neutral; modifying certain form; limiting liability of certain persons or agencies; limiting certain duty of specified persons or agencies under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2001, Section 1148.10, is amended to read as follows:

Section 1148.10 If judgment ~~be~~ is for the plaintiff, the court shall, at the request of the plaintiff, ~~his~~ the plaintiff's agent or attorney, issue a writ of execution thereon, which shall be in substantially the following form:

The State of Oklahoma, _____ County.

The State of Oklahoma to the Sheriff of _____ County:

Whereas, in a certain action for the forcible entry and detention (or for the forcible detention as the case may be) of the following described premises, to wit: _____ lately tried before me, wherein _____ was plaintiff, and _____ was defendant, judgment was rendered on the ____ day of _____, ~~19~~ 20, that the plaintiff have restitution of said premises; and also that ~~he~~ the plaintiff recover rent, attorney fees and costs in the sum of _____; you, therefore, are hereby commanded to cause the defendant to be forthwith removed from said premises using whatever force is deemed reasonably necessary and the said plaintiff to have restitution of the same; also that you levy on the goods and

chattels of the said defendant, and make the costs aforesaid, and all accruing costs, and of this writ, make legal service and due return.

Witness my hand this _____ day of _____, 19 20.

A.B., Judge

A motion for a new trial may be filed only within three (3) days of judgment but shall not operate to stay execution.

SECTION 2. AMENDATORY 12 O.S. 2001, Section 1148.10A, is amended to read as follows:

Section 1148.10A A. The plaintiff or agent of the plaintiff or officer shall immediately notify the defendant in person or by posting ~~of said~~ notice that the plaintiff or agent of the plaintiff or officer shall return in forty-eight (48) hours to restore the plaintiff possession of the premises by executing the writ prescribed in Section 1148.10 of this title and shall make levy to collect the amount of the judgment and all accruing costs.

B. The original writ of execution issued as provided by Section 1148.10 of this title shall be filed in the action in the manner provided for judgments in civil cases.

C. The plaintiff or agent of the plaintiff may execute the writ upon the defendant by personally serving a certified copy of the writ upon the defendant or upon a person authorized to receive service of process as provided by Section 2004 of this title. If the plaintiff or agent of the plaintiff is unable to personally serve the defendant or a person authorized to receive service of process as provided by Section 2004 of this title, the plaintiff or agent of the plaintiff may post a notice in a conspicuous place at the premises address that the plaintiff or agent of the plaintiff shall return at a specified date and time, which shall be not less than forty-eight (48) hours from the time of posting, to restore the

plaintiff to possession of the premises by executing the writ prescribed in Section 1148.10 of this title.

D. Any person who wrongfully refuses to surrender possession of the premises described in the writ of execution upon service of the writ by the plaintiff or the agent of the plaintiff shall, upon conviction, be ~~deemed~~ guilty of a trespass and may be punished by a fine in an amount not to exceed Five Hundred Dollars (\$500.00) or by confinement in the county jail for a period not to exceed thirty (30) days or by both such fine and imprisonment.

E. The plaintiff or the agent of the plaintiff may summon either the sheriff of the county or the law enforcement agency of the city or town in which the premises are located for assistance in executing the writ. The sheriff or law enforcement agency shall be immune from liability for assisting the plaintiff in enforcing the writ, except for injury caused by gross negligence or willful and wanton misconduct by the sheriff or agency.

F. If the premises described in the writ of execution is real property in which a manufactured, mobile or trailer home is situated and is owned or occupied by the defendant, the duty of the sheriff or law enforcement agency shall be limited to the removal of the defendant from the premises or securing such personal property.

G. The plaintiff's, the agent of the plaintiff's, or the officer's return shall be as upon other executions. Within two (2) days of the date of the judgment, the defendant may post supersedeas bond conditioned as provided by law. This time limit may be enlarged by a trial judge's order to not more than seven (7) days after the date of judgment. The posting of a supersedeas bond shall not be construed to relieve the defendant of his or her duty to pay current rent as it becomes due while the appeal is pending. The rent shall be paid into the court clerk's office together with poundage. If there ~~be~~ is controversy as to the amount of rent, the judge shall determine by order ~~how much shall~~ the amount to be paid

in what time intervals. Withdrawal by the plaintiff of rent deposited in the court clerk's office pending appeal shall not operate to estop him from urging on appeal his or her right to the possession of the premises. Failure to pay current rentals while the appeal is pending shall be considered as abandonment of the appeal.

SECTION 3. This act shall become effective November 1, 2002.

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