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HOUSE BILL NO. 2095

Offered January 8, 2003

Prefiled January 7, 2003

A BILL to amend and reenact § 16.1-92 of the Code of Virginia, relating to removal to circuit court.

Patron—Joannou

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 16.1-92 of the Code of Virginia is amended and reenacted as follows:**

§ 16.1-92. Removal of action involving more than \$4,500.

When the amount in controversy in any action at law except cases of unlawful entry and detainer in a general district court exceeds the sum of \$4,500, exclusive of interest, attorney's fees contracted for in the instrument, and costs, the judge shall, at any time on or before the return day of the process, or within ~~ten~~ 10 days after such return day, if trial of the case has not commenced and if judgment has not been rendered, upon the application of any defendant, the filing by him of an affidavit of himself, his agent or attorney, that he has a substantial defense to the action, exclusive of the sole issue of the amount ~~of~~ , computation *or causation* of damages, which affidavit shall state the grounds of such defense, and the payment by him of the costs accrued to the time of removal, the writ tax as fixed by law, and the costs in the court to which it is removed as fixed by subdivision 13 of § 17.1-275, remove the action and all the papers thereof to a court having jurisdiction of appeals from the court wherein the action was brought; and the clerk if there be one, or the judge if there be no clerk of the court, shall promptly transmit the papers in the case and the writ tax and costs to the clerk of the court to which the action is removed. If the defendant fails to pay the accrued costs, writ tax, and the costs in the court to which the case is removed at the time the application for removal is filed, the judge shall proceed to try the case.

On the trial of the case in the circuit court the proceedings shall conform as nearly as may be to proceedings prescribed by the Rules of Court for other actions at law, but the court may permit all necessary amendments, including amendments to increase the amount of the claim above the jurisdictional amount set forth in § 16.1-77, enter such orders, and direct such proceedings as may be necessary or proper to correct any defects, irregularities and omissions in the pleadings and bring about a trial of the merits of the controversy.

In no event shall an objection to venue be considered by the circuit court unless raised by a defendant in his affidavit of substantial defense filed in the general district court.

The limits for removal of cases under the Tort Claims Act (§ 8.01-195.1 et seq.) shall be governed by the jurisdictional amounts set forth in that act.

INTRODUCED

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