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## SENATE BILL NO. 214

Senate Amendments in [ ] — February 13, 1996

A BILL to amend and reenact § 16.1-92 of the Code of Virginia, relating to removal of certain actions from the district courts.

Patrons—Williams, Hawkins, Schrock and Stosch; Delegate: Albo

Referred to the 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 \$1,000.

~~When~~ Except in cases of unlawful entry and detainer, 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 \$1,000, exclusive of interest, attorney's fees contracted for in the instrument, and costs, upon the application of any defendant, the judge shall, at any time on or before the return day of the process, or within ten 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, remove the action and all the papers thereof to a court having jurisdiction of appeals from the court in which the action was brought. The application shall be made (i) at any time on or before the return day of the process or (ii) upon notice to the plaintiff, within ten days after the return day but not within [ ~~one day~~ three days ] prior to any scheduled hearing in the matter and provided that the trial has not commenced and judgment has not been rendered. The application shall include the filing by ~~him~~ the defendant of an affidavit of himself, his agent or attorney, that he has a substantial defense to the action, ~~which affidavit~~ and shall state the grounds of such defense, and the payment by him of. At the time of making the application the defendant shall pay 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 (17) of § 14.1-112; ~~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.~~ Upon removal, the clerk 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, 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.

ENGROSSED

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