

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT OF SDCL)
15-39-57)

RULE 97-14

A hearing having been held on February 21, 1997, at Pierre, South Dakota, relating to the amendment of SDCL 15-39-57, and the Court having considered the proposed amendment, the correspondence and oral presentations relating thereto, if any, and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-39-57 be and it is hereby amended to read in its entirety as follows:

15-39-57. Claim of trial by court or jury by defendant -- Affidavit -- Special rule in designated judicial circuit governing removal to the regular civil docket of the court -- Entry fee and undertaking. No party to an action under the procedure may appeal to the circuit court. In lieu thereof, defendant may, five days prior to the date upon which the defendant is notified to appear or answer, file in the court or with the magistrate in which the action is pending, a claim of trial by court or jury and a petition to remove the action to the regular civil docket of the circuit court or magistrate court and state therein whether the defendant intends to proceed with a trial by jury or a trial to the court. Failure to make the request within the time provided shall be deemed an acceptance by the defendant to the jurisdiction of small claims court. The petition shall be supported by an affidavit that states there are issues and questions of fact being litigated that are so complex or important that the parties cannot be adequately protected without the procedure of a formal civil trial, with specifications of the same, and that such a trial is intended in good faith. The sum of thirty-five dollars for entry of the action for trial in the circuit or magistrate court, as the case may be, must accompany the petition and affidavit. The defendant must also deposit the sum of two hundred fifty dollars to secure the plaintiff for costs and/or damages which the court may determine the plaintiff is reasonably entitled to receive.

In the judicial circuit so designated by the Supreme Court under (insert statute law designation for HB 1068) and effective July 1, 1997 through July 1, 1998, the decision to transfer is discretionary with the court; however, the court shall hold a hearing on the petition if requested by either party. If the court determines that, in the interests of justice, the matter should be removed to the regular civil docket, the defendant shall deposit with the clerk of court the sum of thirty-five dollars for the entry of the action for trial in the circuit or magistrate court, as the case may be. The defendant must also deposit the sum of two hundred fifty dollars to secure the plaintiff for costs and/or damages which the court may determine the plaintiff is reasonably entitled to receive.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 1997.

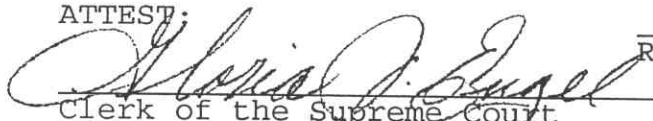
DATED at Pierre, South Dakota, this 17th day of March, 1997.

BY THE COURT:



Robert A. Miller, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

MAR 17 1997



Clerk