

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 328

An Act to amend and reenact § 8.01-676.1 of the Code of Virginia, relating to security for appeals.

[S 172]

Approved April 8, 2004

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-676.1 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-676.1. Security for appeal.

A. Security for costs of appeal of right to Court of Appeals. - A party filing a notice of an appeal of right to the Court of Appeals shall simultaneously file an appeal bond or irrevocable letter of credit in the penalty of \$500, or such sum as the trial court may require, subject to subsection E, conditioned upon paying all costs and fees incurred in the Court of Appeals and the Supreme Court if it takes cognizance of the claim. If the appellant wishes suspension of execution, the security shall also be conditioned as provided in subsection C and shall be in such sum as the trial court may require.

B. Security for costs on petition for appeal to Court of Appeals or Supreme Court. - An appellant whose petition for appeal is granted by the Court of Appeals or the Supreme Court shall (if he has not done so) within ~~fifteen~~ 15 days from the date of the Certificate of Appeal file an appeal bond or irrevocable letter of credit in the same penalty as provided in subsection A, conditioned on the payment of all damages, costs, and fees incurred in the Court of Appeals and in the Supreme Court.

C. Security for suspension of execution. - An appellant who wishes execution of the judgment or award from which an appeal is sought to be suspended during the appeal shall, subject to the provisions of subsection J, file an appeal bond or irrevocable letter of credit conditioned upon the performance or satisfaction of the judgment and payment of all damages incurred in consequence of such suspension, and except as provided in subsection D, execution shall be suspended upon the filing of such security and the timely prosecution of such appeal. Such security shall be continuing and additional security shall not be necessary except as to any additional amount which may be added by the courts.

D. Suspension of execution in decrees for support and custody; injunctions. - The court from which an appeal is sought may refuse to suspend the execution of decrees for support and custody, and may also refuse suspension when a judgment refuses, grants, modifies, or dissolves an injunction.

E. Increase or decrease in penalty of security. - The Court of Appeals or the Supreme Court, when it considers a petition for appeal, may order that the penalty of the security for the appeal be decreased or increased if such request is made in the brief of any party filed in the Court of Appeals, or in the Petition for Appeal or the appellee's Brief in Opposition filed in the Supreme Court or the Court of Appeals. Affidavits and counter-affidavits may be filed by the parties containing facts pertinent to such request. Any increase or decrease in the amount of the security so ordered shall be effected in the clerk's office of the trial court within ~~fifteen~~ 15 days of the order of the Court of Appeals or the Supreme Court. If an increase so ordered is not effected within ~~fifteen~~ 15 days, the appeal shall be dismissed. Such increase or decrease in the penalty of the security may also be considered and ordered by the trial court, on motion of either party, at any time until the Court of Appeals or the Supreme Court acts upon the amount of penalty, and failure to increase such penalty as hereinabove provided shall also cause the appeal to be dismissed.

F. By whom executed. - Each bond filed shall be executed by a party or another on his behalf, and by surety approved by the clerk of the court from which appeal is sought, or by the clerk of the Supreme Court or the clerk of the Court of Appeals if the bond is ordered by such Court. Any letter of credit posted as security for an appeal shall be in a form acceptable to the clerk of the court from which appeal is sought, or by the clerk of the Supreme Court or the Court of Appeals if the security is ordered by such court. The letter of credit shall be from a bank incorporated or authorized to conduct banking business under the laws of this Commonwealth or authorized to do business in this Commonwealth under the banking laws of the United States, or a federally insured savings institution located in this Commonwealth.

G. Appeal from State Corporation Commission; security for costs. - When an appeal of right is entered from the State Corporation Commission to the Supreme Court, and no suspension of the order, judgment, or decree appealed from is requested, such appeal bond or letter of credit shall be filed when and in the amount required by the clerk of the Supreme Court, whose action shall be subject to review by the Supreme Court.

H. Appeal from State Corporation Commission; suspension. - Any judgment, order, or decree of the State Corporation Commission subject to appeal to the Supreme Court may be suspended by the Commission or by the Supreme Court pending decision of the appeal if the Commission or the Supreme Court deems such suspension necessary for the proper administration of justice but only upon the

written application of an appellant after reasonable notice to all other parties in interest and the filing of a suspending bond or irrevocable letter of credit with such conditions, in such penalty, and with such surety thereon as the Commission or the Supreme Court may deem sufficient. But no surety shall be required if the appellant is any county, city or town of this Commonwealth, or the Commonwealth.

I. Forms of bonds; letters of credit; where filed. - The Clerk of the Supreme Court shall prescribe separate forms for appeal bonds, one for costs alone, one for suspension of execution, and one for both and a form for irrevocable letters of credit, to which the bond or bonds or irrevocable letters of credit given shall substantially conform. The forms for each bond and the letter of credit shall be published in the Rules of Court. It shall be sufficient if the bond or letter of credit, when executed as required, is filed with the trial court, clerk of the Virginia Workers' Compensation Commission, or the clerk of the State Corporation Commission, whichever is applicable, and no personal appearance in the trial court, Virginia Workers' Compensation Commission, or State Corporation Commission by the principal, the surety on the bond or the bank issuing the letter of credit shall be required as a condition precedent to its filing.

J. ~~Limit on security for suspension of execution.~~ - ~~If the appellee in a civil action obtains a judgment for damages other than compensatory damages, or in excess of the compensatory damages, and the appellant seeks a stay of execution of the judgment in order to obtain review in the Court of Appeals or Supreme Court, the appeal bond or irrevocable letter of credit for the portion of the damages, other than the compensatory damages, or in excess of the compensatory damages, shall not exceed \$25,000,000~~ *In any civil litigation under any legal theory, the amount of the appeal bond or irrevocable letter of credit to be furnished during the pendency of all appeals or discretionary reviews of any judgment granting legal, equitable, or any other form of relief in order to stay the execution thereon during the entire course of appellate review by any courts shall be set in accordance with applicable laws or court rules, except that the total appeal bond or irrevocable letter of credit that is required of an appellant and all of its affiliates shall not exceed \$25 million, regardless of the value of the judgment.*

K. Dissipation of assets. - If the appellee proves by a preponderance of the evidence that a party bringing an appeal, for whom the appeal bond or irrevocable letter of credit requirement has been limited or waived pursuant to subsection J, is purposefully dissipating its assets or diverting assets outside the jurisdiction of the United States courts for the purpose of evading the judgment, the limitation or waiver granted pursuant to subsection J shall be rescinded and ~~the bond requirement shall be reinstated~~ *for a court may require the appellant to post a bond or irrevocable letter of credit in an amount up to the full amount of the judgment.* Dissipation of assets shall not include those ongoing expenditures made from assets of the kind that the appellant made in the regular course of business prior to the judgment being appealed, such as the payment of stock dividends and other financial incentives to the shareholders of publicly owned companies, continued participation in charitable and civic activities, and other expenditures consistent with the exercise of good business judgment.

L. For good cause shown, a court may otherwise waive the filing of an appeal bond or irrevocable letter of credit as to the damages in excess of, or other than, the compensatory damages.

M. Exemption. - When an appeal is proper to protect the estate of a decedent or person under disability, or to protect the interest of the Commonwealth or any county, city, or town of this Commonwealth, no security for appeal shall be required.

N. Indigents. - No person who is an indigent shall be required to post security for an appeal bond.

O. Virginia Workers' Compensation Commission. - No claimant who files an appeal from a final decision of the Virginia Workers' Compensation Commission with the Court of Appeals shall be required to post security for costs as provided in subsection A or B of this section if such claimant has not returned to his employment or by reason of his disability is unemployed. Such claimant shall file an affidavit describing his disability and employment status with the Court of Appeals together with a motion to waive the filing of the security under subsection A or B of this section.

P. Time for filing security for appeal. - The appeal bond or letter of credit prescribed in subsections A and B is not jurisdictional and the time for filing such security in cases before the Court of Appeals or the Supreme Court may be extended by a judge or justice of the court before which the case is pending on motion for good cause shown and to attain the ends of justice.

Q. Consideration of appeal bond or letter of credit by Court of Appeals. - A determination on an issue affecting an appeal bond or letter of credit in a case before the Court of Appeals may be considered by an individual judge of such court rather than by a panel of judges.

2. That the provisions of this act are procedural and not substantive in nature.