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HOUSE BILL NO. 1397

Offered January 23, 2004

A BILL to amend and reenact §§ 8.01-337, 8.01-338, 8.01-341, 8.01-341.1, 8.01-356, and 25.1-229 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 8.01-341.3 and 8.01-341.4, and by adding in Article 2 of Chapter 11 of Title 8.01 sections numbered 8.01-342.1 and 8.01-342.2, and to repeal § 8.01-341.2 of the Code of Virginia, relating to jury service; penalties.

Patrons—Hogan and Janis

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-337, 8.01-338, 8.01-341, 8.01-341.1, 8.01-356, and 25.1-229 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 8.01-341.3 and 8.01-341.4, and by adding in Article 2 of Chapter 11 of Title 8.01 sections numbered 8.01-342.1 and 8.01-342.2, as follows:

§ 8.01-337. Full participation on petit juries of all citizens.

~~All citizens~~ *It is the policy of the Commonwealth that all qualified citizens have an obligation to serve on petit juries when summoned by the courts of the Commonwealth, unless excused. Citizens over eighteen* 18 years of age who have been residents of the Commonwealth one year, and of the county, city or town in which they reside six months next preceding their being summoned to serve as such, and competent in other respects, except as hereinafter provided, shall be liable to serve as jurors. No person shall be deemed incompetent to serve on any jury because of blindness or partial blindness. Military personnel of the United States Army, Air Force or Navy shall not be considered residents of this Commonwealth by reason of their being stationed herein.

§ 8.01-338. Who disqualified.

The following persons shall be disqualified from serving as jurors:

1. Persons adjudicated incapacitated; *or*
2. Persons convicted of treason or a felony; ~~or~~
3. ~~Any other person under a disability as defined in § 8.01-2 and not included in subdivisions 1 or 2 above.~~

§ 8.01-341. Who are exempt from jury service.

The following *persons* shall be exempt from serving on juries in civil and criminal cases:

1. The President and Vice-President of the United States,
2. The Governor, Lieutenant Governor and Attorney General of the Commonwealth,
3. The members of both houses of Congress,
4. The members of the General Assembly, while in session or during a period when the member would be entitled to a legislative continuance as a matter of right under § 30-5,
5. ~~Licensed practicing attorneys,~~
6. The judge of any court, members of the State Corporation Commission, members of the Virginia Workers' Compensation Commission, and magistrates,
7. Sheriffs, deputy sheriffs, state police, and police in counties, cities and towns,
8. The superintendent of the penitentiary and his assistants and the persons composing the guard,

and

9. Superintendents and jail officers, as defined in § 53.1-1, of regional jails.

§ 8.01-341.1. Exemptions from jury service upon request.

Any of the following persons may serve on juries in civil and criminal cases but shall be exempt from jury service upon his request:

1. through 3. ~~[Repealed.]~~
4. A mariner actually employed in maritime service;
5. through 7. ~~[Repealed.]~~
8. A person who has legal custody of and is necessarily and personally responsible for a child or children sixteen years of age or younger requiring continuous care by him during normal court hours;
9. A person who is necessarily and personally responsible for a person having a physical or mental impairment requiring continuous care by him during normal court hours;
10. 1. Any person over seventy 70 years of age, *or*
11. 2. Any person whose spouse is summoned to serve on the same jury panel;
12. Any person who is the only person performing services for a business, commercial or agricultural enterprise and whose services are so essential to the operations of the business, commercial or

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59 agricultural enterprise that such enterprise must close or cease to function if such person is required to
60 perform jury duty.

61 § 8.01-341.3. Postponements of petit jury participation; penalty.

62 A. Notwithstanding any other provision of law, service as a petit juror shall be postponed or excused
63 only in accordance with the provisions of this chapter.

64 B. Individuals scheduled to appear for jury service have the right to postpone the date of their initial
65 appearance for jury service one time only. When requested, postponements shall be granted, provided
66 that:

67 1. The juror has not previously been granted a postponement;

68 2. The prospective juror appears in person or contacts the court clerk by telephone, electronic mail,
69 or in writing to request a postponement; and

70 3. Prior to the grant of a postponement with the concurrence of the court clerk, the prospective juror
71 fixes a date certain on which he will appear for jury service that is not more than six months after the
72 date on which the prospective juror originally was called to serve and on which date the court will be
73 in session.

74 C. The court may approve a subsequent request to postpone jury service only in the event of an
75 extreme emergency, such as a death in the family, sudden grave illness, a natural disaster or a national
76 emergency in which the prospective juror is personally involved, that could not have been anticipated at
77 the time the initial postponement was granted. Prior to the grant of a second postponement, the
78 prospective juror must fix a date certain on which the individual will appear for jury service within six
79 months of the postponement on a date when the court will be in session.

80 D. An individual who fails to appear in person on the date scheduled for jury service and who has
81 failed to obtain a postponement in compliance with the provisions for requesting a postponement, or
82 who fails to appear on the date set pursuant to subdivision 3 of subsection

83 B, or subsection C, is guilty of a Class 2 misdemeanor.

84 § 8.01-341.4. Excuses from petit jury service.

85 A. An individual may apply to be excused from jury service for a period of up to 24 months, instead
86 of seeking a postponement, when:

87 1. The prospective juror has a mental or physical condition that causes him to be incapable of
88 performing jury service. The juror, or the juror's personal representative, must provide the court with
89 documentation from a physician licensed to practice medicine verifying that a mental or physical
90 condition renders the person unfit for jury service for a period of not less than the 24-month period for
91 which the excuse is sought; or

92 2. Jury service would cause undue or extreme physical or financial hardship to the prospective juror
93 or a person under his care or supervision.

94 B. For purposes of this section, "undue or extreme physical or financial hardship" is limited to
95 circumstances in which an individual would:

96 1. Be required to abandon a person under his personal care or supervision due to the impossibility
97 of obtaining an appropriate substitute caregiver during the period of participation in the jury pool or on
98 the jury;

99 2. Incur costs that would have a substantial adverse impact on the payment of the individual's
100 necessary daily living expenses or on those for whom he provides the principal means of support; or

101 3. Suffer physical hardship that would result in illness or disease.

102 "Undue or extreme physical or financial hardship" does not exist solely based on the fact that a
103 prospective juror will be required to be absent from his place of employment.

104 C. A judge of the court for which the individual was called to jury service shall make undue or
105 extreme physical or financial hardship determinations. Any person asking a judge to grant an excuse
106 based on "undue or extreme physical or financial hardship" shall be required to provide the judge with
107 documentation, such as, but not limited to, federal and state income tax returns, medical statements
108 from licensed physicians, proof of dependency or guardianship, and similar documents that the judge
109 finds to clearly support the request to be excused. Failure to provide satisfactory documentation shall
110 result in a denial of the request to be excused. A person asking to be excused based on a finding of
111 undue or extreme physical or financial hardship must take all actions necessary to have obtained a
112 ruling on that request by no later than the date on which the individual is scheduled to appear for jury
113 duty.

114 D. After 24 months, a person excused from jury service shall become eligible once again for
115 qualification as a juror unless the person was excused from service permanently. A person is excused
116 from jury service permanently only when the deciding judge determines that the underlying grounds for
117 being excused are of a permanent nature.

118 § 8.01-342.1. Rights of petit jurors.

119 A. Notwithstanding any other laws of the Commonwealth, any person who is summoned to serve as a
120 juror and who notifies his employer of such summons within a reasonable period of time after receipt of

a summons and prior to his appearance for jury duty may not be removed from his employment position or otherwise be subject to any adverse employment action as a result of such service.

B. An employee may not be required or requested to use annual, vacation, or sick leave for time spent responding to a summons for jury duty, time spent participating in the jury selection process or for time spent actually serving on a jury. Nothing in this section shall be construed to require an employer to provide annual, vacation, or sick leave to employees under the provisions of this statute who otherwise are not entitled to such benefits under company policies.

C. Service of prospective jurors shall be for no more than one court day in actual attendance, unless a prospective juror is selected to serve in a trial or is under consideration to serve in a trial and such consideration covers a period of two or more days. Once selected, a juror shall serve on the jury for the duration of the trial unless excused by the presiding judge.

D. A juror who has served on a petit jury in the Commonwealth shall not be summoned to serve again as a petit juror in any court of the Commonwealth for two years following the last day of such service.

E. A court shall automatically postpone and reschedule the service of a summoned juror of an employer with five or fewer full-time employees, or their equivalent, if another employee of that employer is summoned to appear during the same period. Such postponement will not affect an individual's right to one automatic postponement under subsection B of § 8.01-341.3.

§ 8.01-342.2. Lengthy Trial Fund.

A. The Supreme Court of Virginia shall promulgate rules to establish a Lengthy Trial Fund ("Fund"). The Fund shall be used to provide wage replacement or supplementation to jurors who serve on petit juries in civil litigation after the third day of jury service. The rules shall provide for the following:

1. The selection and appointment of an administrator for the Fund;
2. Procedures for the administration of the Fund, including payments of salaries of the administrator and other necessary personnel;

3. Procedures for the accounting, auditing and investment of money in the Fund; and

4. A report by the Supreme Court on Fund administration, to be included in its annual report on the judicial branch. The report shall document funds collected for and disbursed from the Fund.

B. Each trial court in the Commonwealth shall collect from each attorney who files a civil case, unless otherwise exempted under the provisions of this section, a fee of \$20 per case to be paid into the Fund. A case is deemed "filed" at the time the first pleading or other filing on which an attorney's name appears is submitted to the court for filing and opens a new case. All such fees shall be forwarded to the Fund administrator for deposit.

C. The court shall use the fees deposited in the Fund to pay wage replacement or supplementation to any petit juror in civil litigation otherwise eligible to be excused from service pursuant to subdivision A 2 of § 8.01-341.4 for the reasons identified in subdivision B 2 of § 8.01-341.4, beginning on the fourth day of service. The amount paid from the Fund shall be no more than is needed to relieve such financial hardship and, in no event, may exceed \$100 per day per juror.

2. The court shall use the fees deposited in the Fund to pay wage replacement or supplementation, not to exceed \$300 per day, to any petit juror beginning on the tenth day of service.

3. The court may, in its discretion, limit the amount of disbursements from the Fund based on the availability of financial resources.

D. Any juror who is serving or has served on a jury that qualifies for payment from the Fund, provided the service commenced on or after the effective date of this act, may submit a request for payment from the Lengthy Trial Fund on a form that the administrator provides. Payment shall be limited to the difference between the state-paid jury fee and the actual amount of wages a juror earns, up to the maximum level payable, minus any amount the juror actually receives from the employer during the same time period.

1. The form shall disclose the juror's regular wages, the amount the employer will pay during the term of jury service, the amount of replacement or supplemental wages requested, and any other information the administrator deems necessary for proper payment.

2. The juror also shall be required to submit verification from the employer as to the wage information provided to the administrator, for example, the employee's most recent earnings statement or similar document, prior to initiation of payment from the Fund.

3. If an individual is self-employed or receives compensation other than wages, the individual may provide a sworn affidavit attesting to his approximate gross weekly income, together with such other information as the administrator may require, in order to verify weekly income.

E. The following are exempt from payment of the Fund fee:

1. Government attorneys appearing in the course of their official duties;
2. Pro se litigants;

182 3. Cases in small claims court or the state equivalent thereof; or

183 4. Claims seeking social security disability determinations; individual veterans' compensation or
184 disability determinations; recoupment actions for government-backed educational loans or mortgages;
185 child custody and support cases; actions brought in forma pauperis; and any other filings designated by
186 rule that involve minimal use of court resources and that customarily are not afforded the opportunity
187 for a trial by jury.

188 § 8.01-356. Failure of juror to appear.

189 If ~~any~~ Any juror who has been given due notice to appear in court ~~shall fail to do so without~~
190 ~~sufficient excuse, he shall be fined not less than \$25 nor more than \$100 and who fails to appear and~~
191 ~~fails to obtain a postponement in compliance with § 8.01-341.3 of this title is guilty of a Class 2~~
192 ~~misdemeanor.~~

193 § 25.1-229. Selection of jurors.

194 A. The jury commissioners established pursuant to Chapter 11 (§ 8.01-336 et seq.) of Title 8.01 shall
195 select condemnation jurors. Except as otherwise provided in this subsection, the provisions of
196 §§ 8.01-345, 8.01-346, 8.01-347, ~~8.01-356~~, and 8.01-358 relating to procedures for preparing this list
197 from which members will be chosen, ~~penalties for failure to appear~~ and voir dire examination shall
198 apply to condemnation jurors, mutatis mutandis. *Any juror who has been given due notice to appear and*
199 *fails to appear shall be fined not less than \$25 nor more than \$100.*

200 B. The condemnation jury shall be comprised of five members. The members of the condemnation
201 jury shall be drawn from the list submitted by the jury commission. The clerk shall, in the presence of
202 the judge, after thoroughly mixing the ballots in the box, openly draw nine names therefrom. At the
203 same time, the names of at least two additional persons shall be drawn to act as alternate jurors in the
204 event of the death, absence, or disability of any acting juror. However, a majority of the nine names
205 drawn as acting jurors, and at least one half of the names drawn for alternate jurors, shall be freeholders
206 of property within the jurisdiction. As soon as practicable thereafter, the clerk shall serve notice on the
207 jurors so drawn to appear in court on the date set for trial. Alternatively, the procedures for selection by
208 mechanical or electronic techniques as provided in § 8.01-350.1 may be utilized.

209 C. After each ballot containing a juror's name has been drawn, it shall be placed in a secure envelope
210 maintained for the purpose of holding drawn ballots. The envelope shall be kept in the ballot box. No
211 drawn ballot shall be returned to the pool of undrawn ballots until the pool has been exhausted, except
212 as may be required to ensure that the required number of names drawn are freeholders of property
213 within the jurisdiction. However, the clerk shall immediately return to the pool of undrawn ballots the
214 ballot of any juror who was drawn but was excused by the court from appearing or was not required to
215 appear because of trial cancellation. When the pool is exhausted, all ballots shall be returned to the box
216 and drawing shall begin again. Alternatively, the procedures for selection by mechanical or electronic
217 techniques as provided in § 8.01-350.1 may be utilized.

218 D. It shall be the duty of the clerk to notify each juror whose name has been drawn of the date on
219 which he is to appear to hear the case. The notice shall be in writing and shall be delivered at least
220 seven days prior to the trial. The clerk shall also promptly notify in writing the jurors who have been
221 struck by pretrial challenge that they need not appear.

222 E. The court shall have the discretionary power to excuse a juror's attendance on any given day or
223 for any specific case upon request of the juror for good cause shown. If a juror is so excused seven or
224 more days prior to trial, a replacement juror shall be drawn and notified under the procedures provided
225 in this section. However, if a juror is so excused within six days prior to trial, an alternate juror will be
226 designated to serve as juror.

227 F. On the day set for trial, jurors who appear shall be called in such a manner as the judge may
228 direct to be sworn on their voir dire until a disinterested and impartial panel is obtained. In addition, a
229 juror may be stricken for cause. If all nine jurors and two alternates appear and none are stricken for
230 cause, each party shall be entitled to exercise two peremptory strikes. However, if, because of strikes for
231 cause and unexpected failure to appear, fewer than nine but more than five jurors remain before the
232 court, the number of peremptory strikes for each party shall be equally reduced, and the judge shall, if
233 necessary, strike by lot an additional name in order to reduce the jury to five members; however, the
234 judge shall not strike a freeholder if the striking of such name would result in freeholders constituting
235 less than a majority of the members of the jury. If fewer than seven jurors remain before the court prior
236 to the exercise of peremptory strikes, the trial may proceed and be heard by less than five jurors
237 provided the parties agree. However, no trial shall proceed with fewer than three jurors.

238 G. The conclusion of the jurors need not be unanimous, and a majority of the jurors may act in the
239 name of the jury.

240 H. In condemnation proceedings instituted by the Commonwealth Transportation Commissioner, a
241 person owning structures or improvements for which an outdoor advertising permit has been issued by
242 the Commonwealth Transportation Commissioner pursuant to § 33.1-360 shall be deemed to be an
243 "owner" for purposes of this section.

244 2. That § 8.01-341.2 of the Code of Virginia is repealed.

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