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**HOUSE BILL NO. 495**

Offered January 14, 2004

Prefiled January 13, 2004

*A BILL to amend and reenact § 8.01-407 of the Code of Virginia, relating to witness summons.*

Patron—Kilgore

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 8.01-407 of the Code of Virginia is amended and reenacted as follows:**

§ 8.01-407. How summons for witness issued, and to whom directed; prior permission of court to summon certain officials and judges; attendance before commissioner of other state; attorney-issued summons; summons for physician.

A. A summons may be issued, directed as prescribed in § 8.01-292, commanding the officer to summon any person to attend on the day and at the place that such attendance is desired, to give evidence before a court, grand jury, arbitrators, magistrate, notary, or any commissioner or other person appointed by a court or acting under its process or authority in a judicial or quasi-judicial capacity. The summons may be issued by the clerk of the court if the attendance is desired at a court or in a proceeding pending in a court. The clerk shall not impose any time restrictions limiting the right to properly request a summons up to and including the date of the proceeding:

If attendance is desired before a commissioner in chancery or other commissioner of a court, the summons may be issued by the clerk of the court in which the matter is pending, or by such commissioner in chancery or other commissioner;

If attendance is desired before a notary or other officer taking a deposition, the summons may be issued by such notary or other officer at the instance of the attorney desiring the attendance of the person sought;

If attendance is sought before a grand jury, the summons may be issued by the attorney for the Commonwealth, or the clerk of the court, at the instance of the attorney for the Commonwealth.

Except as otherwise provided in this subsection, if attendance is desired in a civil proceeding pending in a court or at a deposition in connection with such proceeding, including medical malpractice review panels, and a claim before the Worker's Compensation Commission, a summons may be issued by an attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. An attorney-issued summons shall be on a form approved by the Supreme Court, signed by the attorney and shall include the attorney's address. The summons and any transmittal sheet shall be deemed to be a pleading to which the provisions of § 8.01-271.1 shall apply. A copy of the summons and, if served by a sheriff, all service of process fees, shall be mailed or delivered to the clerk's office of the court in which the case is pending or the Worker's Compensation Commission, as applicable, on the day of issuance by the attorney. The law governing summonses issued by a clerk shall apply mutatis mutandis. When an attorney-at-law transmits one or more attorney-issued subpoenas to a sheriff to be served in his jurisdiction, such subpoenas shall be accompanied by a transmittal sheet. The transmittal sheet, which may be in the form of a letter, shall contain for each subpoena: (i) the person to be served, (ii) the name of the city or county in which the subpoena is to be served, in parentheses, (iii) the style of the case in which the subpoena was issued, (iv) the court in which the case is pending, and (v) the amount of fees tendered or paid to each clerk in whose court the case is pending together with a photocopy of the payment instrument or clerk's receipt. If copies of the same transmittal sheet are used to send subpoenas to more than one sheriff for service of process, then subpoenas shall be grouped by the jurisdiction in which they are to be served. For each person to be served, an original subpoena and copy thereof shall be included. If the attorney desires a return copy of the transmittal sheet as proof of receipt, he shall also enclose an additional copy of the transmittal sheet together with an envelope addressed to the attorney with sufficient first class postage affixed. Upon receipt of such transmittal, the transmittal sheet shall be date-stamped and, if the extra copy and above-described envelope are provided, the copy shall also be date-stamped and returned to the attorney-at-law in the above-described envelope.

However, when such transmittal does not comply with the provisions of this section, the sheriff may promptly return such transmittal if accompanied by a short description of such noncompliance. An attorney may not issue a summons in any of the following civil proceedings: (i) habeas corpus under Article 3 (§ 8.01-654 et seq.) of Chapter 25 of this title, (ii) delinquency or abuse and neglect proceedings under Article 3 (§ 16.1-241 et seq.) of Chapter 11 of Title 16.1, (iii) issuance of a protective order pursuant to Article 4 (§ 16.1-246 et seq.) or Article 9 (§ 16.1-278 et seq.) of Chapter 11

59 of Title 16.1, or Chapter 9.1 (§ 19.2-152.8 et seq.) of Title 19.2, (iv) civil forfeiture proceedings, (v)  
60 habitual offender proceedings under Article 9 (§ 46.2-351 et seq.) of Chapter 3 of Title 46.2, (vi)  
61 administrative license suspension pursuant to § 46.2-391.2 and (vii) petition for writs of mandamus or  
62 prohibition in connection with criminal proceedings. A subpoena issued by an attorney shall not be  
63 issued less than five business days prior to the date that attendance is desired.

64 In other cases, if attendance is desired, the summons may be issued by the clerk of the circuit court  
65 of the county or city in which the attendance is desired.

66 A summons shall express on whose behalf, and in what case or about what matter, the witness is to  
67 attend. Failure to respond to any such summons shall be punishable by the court in which the  
68 proceeding is pending as for contempt. When any subpoena is served less than five calendar days before  
69 appearance is required, the court may, after considering all of the circumstances, refuse to enforce the  
70 subpoena for lack of adequate notice.

71 B. No subpoena shall, without permission of the court first obtained, issue for the attendance of the  
72 Governor, Lieutenant Governor, or Attorney General of this Commonwealth, or a judge of any court  
73 thereof; the President or Vice President of the United States; any member of the President's Cabinet; any  
74 ambassador or consul; or any military officer on active duty holding the rank of admiral or general.

75 C. This section shall be deemed to authorize a summons to compel attendance of a citizen of the  
76 Commonwealth before commissioners or other persons appointed by authority of another state when the  
77 summons requires the attendance of such witness at a place not out of his county or city.

78 *D. The party requesting issuance of a summons for attendance at the trial of a civil action, a*  
79 *medical malpractice review panel, or a discovery deposition of a physician who has rendered health*  
80 *care to a plaintiff shall reimburse the physician for the costs and expenses incurred in his response to*  
81 *such summons. Such costs shall include those fees and costs for health care services cancelled or*  
82 *rescheduled in honoring the summons that could not reasonably be avoided.*