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HOUSE BILL NO. 2425

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 19, 2007)

(Patron Prior to Substitute—Delegate Griffith)

A BILL to amend and reenact §§ 16.1-69.55, 16.1-77.1, 16.1-77.2, 16.1-88.2, 16.1-107, 16.1-114.1, 16.1-122 and 55-232 of the Code of Virginia and to repeal §§ 8.01-127, 8.01-127.1 and 16.1-92 of the Code of Virginia, relating to the elimination of the right to remove a matter from the general district court to the circuit court.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.55, 16.1-77.1, 16.1-77.2, 16.1-88.2, 16.1-107, 16.1-114.1, 16.1-122 and 55-232 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-69.55. Retention of case records; limitations on enforcement of judgments; extensions.

A. Criminal and traffic infraction proceedings:

1. In misdemeanor and traffic infraction cases, all documents shall be retained for 10 years, including cases sealed in expungement proceedings under § 19.2-392.2. Documents in misdemeanor and traffic infraction cases for which an appeal has been made shall be returned to and filed with the clerk of the appropriate circuit court pursuant to § 16.1-135;

2. In felony cases which are certified to the grand jury, all documents shall be certified to the clerk of the appropriate circuit court pursuant to §§ 19.2-186 and 19.2-190. All other felony case documents shall be handled as provided in subdivision A 1 of this section;

3. Dockets and indices shall be retained for 10 years.

B. Civil proceedings:

1. All documents in civil proceedings in district court which are dismissed, including dismissal under § 8.01-335, shall be retained until completion of the Commonwealth's audit of the court records. Notwithstanding § 8.01-275.1, the clerks of the district courts may destroy documents in civil proceedings in which no service of process is had 24 months after the last return date;

2. In civil actions which result in a judgment all documents in the possession of the general district court shall be retained for 10 years and, unless sooner satisfied, the judgment shall remain in force for a period of 10 years;

3. In civil cases ~~which~~ *that* are ~~either removed or~~ appealed to the circuit court pursuant to §§ ~~16.1-92 and 16.1-112~~ *respectively* § 16.1-112, all documents pertaining thereto shall be transferred to the circuit court in accordance with those sections;

4. The limitations on enforcement of general district court judgments provided in § 16.1-94.1 shall not apply if the plaintiff, prior to the expiration of that period for enforcement, pays the circuit court docketing and indexing fees on judgments from other courts together with any other required filing fees and docket the judgment in the circuit court having jurisdiction in the same geographic area as the general district court. After the expiration of the period provided in § 16.1-94.1, executions on such docketed civil judgments may issue from the general district court wherein the judgment was obtained upon the filing in the general district court of an abstract from the circuit court. In all other respects, the docketing of a general district court judgment in a circuit court confers upon such judgment the same status as if the judgment were a circuit court judgment;

5. Dockets for civil cases shall be retained for 10 years;

6. Indices in civil cases shall be retained for 10 years.

C. Juvenile and domestic relations district court proceedings:

1. In adult criminal cases, all records shall be retained as provided in subdivision A 1 of this section;

2. In juvenile cases, all documents and indices shall be governed by the provisions of § 16.1-306;

3. In all cases involving support arising under Titles 16.1, 20 or 63.2, all documents and indices shall be retained until the last juvenile involved, if any, has reached 19 years of age and 10 years have elapsed from either dismissal or termination of the case by court order or by operation of law. Financial records in connection with such cases shall be subject to the provisions of § 16.1-69.56;

4. In cases transferred to circuit court for trial as an adult or appealed to circuit court, all documents pertaining thereto shall be transferred to circuit court;

5. All dockets in juvenile cases shall be governed by the provisions of § 16.1-306 F.

§ 16.1-77.1. When general district court may give judgment on forthcoming bond; removal of case.

A general district court may, on motion, after ten days' notice of the time and place thereof, give judgment on any forthcoming bond taken by a sheriff or other officer upon a fieri facias issued by such court. ~~Any such case meeting the requirements of § 16.1-92 may be removed to the circuit court in accordance with the procedures prescribed by that section.~~

§ 16.1-77.2. Jurisdiction of partition of personal property and proceedings therefor.

Every general district court shall have jurisdiction of proceedings for partition of personal property, within the limits as to value and in accordance with the provisions hereinafter contained.

When joint owners of personal property of the value of more than twenty dollars but not more than maximum jurisdictional limits of the court as provided in § 16.1-77 (1) cannot agree upon a partition thereof, any party in interest may compel partition, the proceeding for which shall be commenced by a petition presented to a general district court as prescribed in subsection 5 of § 8.01-262. A copy of the petition, together with a notice of the time and place the petitioner will ask for a hearing thereon, shall be served on each of the defendants at least ten days prior to the day of hearing. The court shall hear and decide the matter without the appointment or use of commissioners.

~~Any such case meeting the requirements of § 16.1-92 may be removed to the circuit court in accordance with procedures prescribed by that section.~~

Any party aggrieved by a final judgment rendered by the general district court in any such proceeding shall have an appeal of right to any circuit court of the county or city having jurisdiction of appeals from such general district court, to be perfected within the time, and in all other respects in accordance with the provisions of law concerning appeals from general district courts in other civil cases.

§ 16.1-88.2. Evidence of medical reports or records; testimony of health care provider or custodian of records.

In a civil suit tried in a general district court ~~or filed in a general district court and removed to circuit court where the claim does not exceed the jurisdictional amount set forth in § 16.1-77~~ to recover damages for personal injuries or to resolve any dispute with an insurance company or health care provider, either party may present evidence as to the extent, nature and treatment of the injury, the examination of the person so injured and the costs of such treatment and examination by a report from the treating or examining health care provider as defined in § 8.01-581.1 and the records of a hospital or similar medical facility at which the treatment or examination was performed. Such medical report shall be admitted if the party intending to present evidence by the use of a report gives the opposing party or parties a copy of the report and written notice of such intention 10 days in advance of trial and if attached to such report is a sworn statement of the treating or examining health care provider that: (i) the person named therein was treated or examined by such health care provider; (ii) the information contained in the report is true and accurate and fully descriptive as to the nature and extent of the injury; and (iii) that any statement of costs contained in the report is true and accurate. Such hospital or other medical facility record shall be admitted if attached to it is a sworn statement of the custodian thereof that the same is a true and accurate copy of the record of such hospital or other medical facility. If, thereafter, the plaintiff or defendant summons the health care provider or custodian making such statement to testify in proper person or by deposition taken de bene esse, the court shall determine which party shall pay the fee and costs for such appearance or depositions, or may apportion the same among the parties in such proportions as the ends of justice may require. If such health care provider or custodian is not subject to subpoena for cross-examination in court or by a deposition de bene esse, then the court shall allow a reasonable opportunity for the party seeking the subpoena for such health care provider or custodian to obtain his testimony as the ends of justice may require.

§ 16.1-107. Requirements for appeal.

No appeal shall be allowed unless and until the party applying for the same or someone for him shall give bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment as may be rendered on appeal if such appeal is perfected, or if not so perfected, then to satisfy the judgment of the court in which it was rendered. *Such bond shall be posted within 30 days from the date of judgment, except for an appeal from the judgment of a general district court on an unlawful detainer pursuant to § 8.01-129.* However, no appeal bond shall be required of a plaintiff in a civil case where the defendant has not asserted a counterclaim, the Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict, or an insane person, or the interest of a county, city, town or transportation district created pursuant to Chapter 45 (§ 15.2-4500 et seq.) of Title 15.2.

If such bond is furnished by or on behalf of any party against whom judgment has been rendered for money or property or both, the bond shall be conditioned for the performance and satisfaction of such judgment or order as may be entered against such party on appeal, and for the payment of all costs and damages which may be awarded against him in the appellate court. If the appeal is by a party against whom there is no recovery except for costs, the bond shall be conditioned for the payment of such costs and damages as may be awarded against him on the appeal.

In addition to the foregoing, any party applying for appeal shall, within 30 days from the date of the judgment, pay to the clerk of the court from which the appeal is taken the amount of the writ tax of the court to which the appeal is taken and costs as required by subdivision A 13 of § 17.1-275, including all fees for service of process of the notice of appeal in the circuit court pursuant to § 16.1-112.

§ 16.1-114.1. Principles applicable in trial of appeals; defective or irregular warrants or motions.

Actions or proceedings appealed ~~or removed~~ from district courts shall be tried according to the principles of law and equity, and when the same conflict the principles of equity shall prevail. No warrant, motion or other pleading shall be dismissed by reason of a mere defect, irregularity or omission in the proceedings in the district court, or in the form of any such pleading, when the same may be corrected by a proper order of the court of record. In any such case the court of record shall retain the same, with full power to direct all necessary amendments, to enter orders and direct proceedings to correct such defects, irregularities and omissions, to promote substantial justice to all parties, and to bring about a trial of the merits of the controversy. In any case where an appeal is taken by a defendant the circuit court may direct amendments to increase the amount of the claim above the jurisdictional amount set forth in § 16.1-77. This section shall be liberally construed, to the end that justice is not delayed or denied by reason of errors in the pleadings or in the form of the proceedings.

§ 16.1-122. Appeal.

If the money or property claimed in any such proceeding is more than \$4,500 in value, the proceeding may be removed to a circuit court and heard and disposed of therein as provided in § 16.1-92. If the property or money claimed in any such proceeding is more than fifty dollars in value, an appeal of right may be had to the judgment or order of the court as provided in § 16.1-106. The limits for removal of cases under the Tort Claims Act (§ 8.01-195.1 et seq.) shall be governed by the jurisdictional amounts set forth in that act.

§ 55-232. Procedure when distress levied and tenant unable to give forthcoming bond; what defense may be made.

A. On affidavit by a tenant, whose property has been levied on under a warrant of distress, that (i) he is unable to give the bond required in § 8.01-526 and (ii) he has a valid defense under subsection B of this section, ~~or has the right to remove the action to the circuit court under § 16.1-92~~, the officer levying the warrant shall permit the property to remain in the possession and at the risk of the tenant, and shall return the warrant forthwith, together with the affidavit, to the court to which such warrant is returnable. Thereupon the landlord, after ten days' notice in writing to the tenant, may make a motion before such court for a judgment for the amount of the rent and for a sale of the property levied on, as aforesaid. The tenant may make such defense as he is authorized to make, including defenses permitted under such subsection B to an action or motion on the bond when one is given; ~~or he may remove the case to the circuit court under § 16.1-92~~. Upon making such defense, ~~or the removal of the case to the circuit court~~, the officer shall permit the property to remain in the possession of and at the risk of the tenant. However, if the amount in controversy is in excess of \$1,000, removal to the circuit court shall be conditional upon the tenant's giving a forthcoming bond, with sufficient corporate or cash surety, in a penalty double the amount in controversy, with condition to pay any judgment rendered against the tenant, and all costs and damages which may accrue to the landlord as a result of any delay caused by such removal. If the property is perishable, or expensive to keep, the court, or the judge thereof in vacation, may order it to be sold, and on the final trial of the cause, the court shall dispose of the property, or proceeds of sale, according to the rights of the parties.

B. In an action or motion on a forthcoming bond, when it is taken under a distress warrant, the defendants may make defense on the ground that the distress was for rent not due in whole or in part, or was otherwise illegal.

2. That §§ 8.01-127, 8.01-127.1 and 16.1-92 of the Code of Virginia are repealed.