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SENATE BILL NO. 340

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact §§ 8.01-127.1, 16.1-88.2, and 16.1-92 of the Code of Virginia, relating to removal of cases to circuit court.

Patron—Obenshain

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-127.1, 16.1-88.2, and 16.1-92 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-127.1. Removal of unlawful detainer actions.

A. In any case involving a tenancy not involving a default in rent in which an action has been commenced or a summons has been issued pursuant to § 8.01-126, in or returnable to a general district court, removal of the action to the circuit court shall be conditioned upon the defendant (i) ~~filing an affidavit of substantial defense pursuant to the requirements of proceeding by motion for removal in accordance with § 16.1-92 and~~ (ii) paying the costs accrued to the time of removal, the writ tax as fixed by law, and in the court to which it is removed, the costs as fixed by subdivision A 13 of § 17.1-275.

B. The ~~affidavit of substantial defense motion for removal~~ described in subsection A and any representation by the landlord that there has been a default in rent shall be subject to the requirements of § 8.01-271.1.

C. If the defendant fails to pay rent at such time and in such manner as required by the terms of the rental agreement and applicable law, the landlord may file with the circuit court, and serve upon the defendant, or his attorney, an affidavit made by himself, his agent, or his attorney, stating that the rent is delinquent. If within three business days of service of such notice, the defendant or his attorney fails to file, and the court does not receive an affidavit stating that the rent has been paid timely, the circuit court shall enter an order of possession granting the landlord immediate possession of the premises.

If an affidavit is filed on behalf of the defendant stating that payment has been made, the matter shall come before the circuit court forthwith to resolve the issue of payment.

D. Unlawful detainer actions removed to the circuit court shall be accorded priority on the civil docket.

§ 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.

§ 16.1-92. Removal of certain cases to circuit court.

~~When~~ A. Cases in which the amount in controversy in ~~any action~~ is within the limits for concurrent

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59 jurisdiction with the circuit court pursuant to § 8.01-195.4 for Tort Claims Act cases and subdivision 1
60 of § 16.1-77 for all other actions at law except cases of unlawful entry and detainer in a general district
61 court exceeds the sum of \$4,500, exclusive of interest, attorneys' fees contracted for in the instrument,
62 and costs, the judge shall, at any time on or before the return day of the process, or within 10 days after
63 such return day, if trial of the case has not commenced and if judgment has not been rendered, upon the
64 application of any defendant, the filing by him of an affidavit of himself, are subject to removal for
65 trial to the circuit court having jurisdiction of appeals from the court where the action was brought.
66 However, in cases where there is no maximum jurisdictional limit in general district court pursuant to
67 subdivision 1 or 3 of § 16.1-77 or § 16.1-122, such cases are removable if the amount in controversy is
68 at least the minimum amount for concurrent jurisdiction pursuant to subdivision 1 of § 16.1-77. For
69 unlawful detainer cases, the minimum amount for removal shall be pursuant to § 8.01-127. Such
70 amounts shall be exclusive of interest, attorney's fees contracted for in the instrument, and costs.

71 B. A defendant seeking to remove a case to such circuit court shall file a motion seeking removal
72 before (i) the original return day of the process or (ii) within 10 days after such return day if the case
73 is continued or set for trial unless the court sets an earlier trial date, in which case the motion shall be
74 filed prior to the commencement of the trial. Such motion shall include the claim of the defendant, his
75 agent or attorney, that he has a substantial defense to the action, exclusive of other than the sole issue
76 of the amount or computation of damages, which affidavit and shall state the grounds of such defense;
77 and . The motion shall be accompanied by the payment by him to the general district court at the time
78 of filing of the costs accrued to the time of removal, the writ tax as fixed by law, and the costs in the
79 circuit court to which it is removed as fixed by subdivision A 13 of § 17.1-275; remove the action and
80 all the papers thereof to a court having jurisdiction of appeals from the court wherein the action was
81 brought; and the clerk if there be one, or the judge if there be no clerk of the court, shall promptly
82 transmit the papers in the case and the writ tax and costs to the clerk of the court to which the action is
83 removed. If the defendant fails to pay the accrued costs, writ tax, and the costs in the court to which the
84 case is removed at the time the application for removal is filed, the judge shall proceed to try the case.
85 Such motion may not be accepted for filing or considered in the absence of such payment at the time of
86 filing. In unlawful detainer cases, the provisions of §§ 8.01-127 and 8.01-127.1 shall also apply.

87 C. The judge shall conduct a hearing on such motion, at which the parties may present evidence and
88 argument. Such motion may be granted only if the judge makes an affirmative finding that the defendant
89 has a qualifying substantial defense to the action, and the order granting removal shall recite such
90 qualifying substantial defense. No such finding shall be made by default. When a bond is required by
91 §§ 8.01-127 or 55-232, the judge shall also determine in that hearing the terms of such bond. Upon
92 granting the motion, the papers in such action, together with the writ tax and costs and any bond
93 required by law, shall be transmitted promptly to the clerk of such circuit court. Upon receipt in the
94 circuit court, the case shall thereafter be a circuit court case not subject to remand and shall be given
95 priority on the docket.

96 D. On the trial of the case in the circuit court the proceedings shall conform as nearly as may be to
97 proceedings prescribed by the Rules of Court for other actions at law, but the as modified by the
98 application of the provisions of § 16.1-88.2. The court, however, may permit all necessary amendments,
99 including amendments to increase the amount of the claim above the jurisdictional amount set forth in
100 §§ 8.01-195.4 and 16.1-77, enter such orders, and direct such proceedings as may be necessary or proper
101 to correct any defects, irregularities and omissions in the pleadings and bring about a trial of the merits
102 of the controversy.

103 In addition, in no event shall an objection to venue be considered by the circuit court unless raised
104 by a defendant in his affidavit motion of substantial defense filed in the general district court.