

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 8.01-380 of the Code of Virginia, relating to the dismissal of actions by*  
3 *nonsuit.*

4  
5 Approved

[S 911]

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That § 8.01-380 of the Code of Virginia is amended and reenacted as follows:**

8 § 8.01-380. Dismissal of action by nonsuit; fees and costs.

9 A. A party shall not be allowed to suffer a nonsuit as to any cause of action or claim, or any other  
10 party to the proceeding, unless he does so before a motion to strike the evidence has been sustained or  
11 before the jury retires from the bar or before the action has been submitted to the court for decision.  
12 After a nonsuit no new proceeding on the same cause of action or against the same party shall be had in  
13 any court other than that in which the nonsuit was taken, unless that court is without jurisdiction, or not  
14 a proper venue, or other good cause is shown for proceeding in another court, or when such new  
15 proceeding is instituted in a federal court. If after a nonsuit an improper venue is chosen, the court shall  
16 not dismiss the matter but shall transfer it to the proper venue upon motion of any party.

17 B. Only one nonsuit may be taken to a cause of action or against the same party to the proceeding,  
18 as a matter of right, although the court may allow additional nonsuits *upon reasonable notice to counsel*  
19 *of record for all defendants and upon a reasonable attempt to notify any party not represented by*  
20 *counsel*, or counsel may stipulate to additional nonsuits. The court, in the event additional nonsuits are  
21 allowed, may assess costs and reasonable attorneys' fees against the nonsuiting party. *When suffering a*  
22 *nonsuit, a party shall inform the court if the cause of action has been previously nonsuited. Any order*  
23 *effecting a subsequent nonsuit shall reflect all prior nonsuits and shall include language that reflects the*  
24 *date of any previous nonsuit together with the court in which any previous nonsuit was taken.*

25 C. If notice to take a nonsuit of right is given to the opposing party within seven days of trial, the  
26 court in its discretion may assess against the nonsuiting party reasonable witness fees and travel costs of  
27 expert witnesses scheduled to appear at trial, which are actually incurred by the opposing party solely by  
28 reason of the failure to give notice at least seven days prior to trial. The court shall have the authority to  
29 determine the reasonableness of expert witness fees and travel costs.

30 D. A party shall not be allowed to nonsuit a cause of action, without the consent of the adverse party  
31 who has filed a counterclaim, cross claim or third-party claim which arises out of the same transaction  
32 or occurrence as the claim of the party desiring to nonsuit unless the counterclaim, cross claim or  
33 third-party claim can remain pending for independent adjudication by the court.

ENROLLED

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