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SENATE BILL NO. 1340

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend the Code of Virginia by adding in Article 5 of Chapter 14 of Title 8.01 a section numbered 8.01-410.1, relating to school teachers as witnesses in certain proceedings.

Patron—Herring

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 5 of Chapter 14 of Title 8.01 a section numbered 8.01-410.1 as follows:

§ 8.01-410.1. School teachers as witnesses in certain proceedings.

A. A party in any case in which custody or visitation of a minor child is at issue, whether in a circuit or district court, may have a subpoena issued to summon a teacher of the child to testify at a deposition or a court hearing, provided that:

1. The subpoena shall be deemed to be a pleading to which the provisions of § 8.01-271.1 apply;

2. The subpoena shall express on whose behalf, and in what case or about what matter, and to the extent possible the hour of the day, the teacher is to attend; and

3. Prior to having the subpoena issued, the party shall (i) contact the teacher to determine his teaching schedule; (ii) make reasonable efforts to avoid conflicts with that schedule; and (iii) explain to the teacher the party's reason for seeking the teacher's testimony.

B. The court may, on a motion made by the teacher or the party seeking his testimony, modify the date prescribed in the subpoena for attendance at the deposition or court hearing if it finds that such teacher's teaching responsibilities would otherwise be impaired by compliance with the subpoena.

C. The court may impose upon any party it finds had such subpoena issued in bad faith an appropriate sanction, in addition to any sanction it imposes pursuant to § 8.01-271.1, which may include an order to pay the teacher's employer the costs the employer incurred in employing a substitute teacher to substitute for the teacher of the minor child during his absence caused by compliance with the subpoena.

INTRODUCED

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