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SENATE BILL NO. 958

Offered January 14, 2009

Prefiled January 12, 2009

A *BILL to amend the Code of Virginia by adding in Chapter 14 of Title 8.01 an article numbered 6.2, consisting of sections numbered 8.01-412.8 through 8.01-412.15, and to repeal Article 6 (§§ 8.01-411 through 8.01-412.1) of Chapter 14 of Title 8.01 of the Code of Virginia, relating to the Uniform Interstate Depositions and Discovery Act.*

Patrons—Obenshain; Delegate: Loupassi

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 Chapter 14 of Title 8.01 an article numbered 6.2, consisting of sections numbered 8.01-412.8 through 8.01-412.15, as follows:

*Article 6.2.**Uniform Interstate Depositions and Discovery Act.**§ 8.01-412.8. Short title.*

This article may be cited as the Uniform Interstate Depositions and Discovery Act.

§ 8.01-412.9. Definitions.

For purposes of this article, unless the context requires otherwise:

"Foreign jurisdiction" means a state other than the Commonwealth.

"Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

"Subpoena" means a document, however denominated, issued under the authority of a court of record requiring a person to:

1. Attend and give testimony at a deposition;

2. Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person;

or

3. Permit inspection of premises under the control of the person.

§ 8.01-412.10. Issuance of subpoena.

A. To request the issuance of a subpoena under this article, a party shall submit to the clerk of court in the circuit in which discovery is sought to be conducted in the Commonwealth (i) a foreign subpoena and (ii) a written statement that the law of the foreign jurisdiction grants reciprocal privileges to citizens of the Commonwealth for taking discovery in the jurisdiction that issued the foreign subpoena.

B. When a party submits a foreign subpoena to a clerk of court in the Commonwealth, the clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

C. A subpoena under subsection B shall:

1. Incorporate the terms used in the foreign subpoena; and

2. Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

D. A request for the issuance of a subpoena under this article does not constitute an appearance in the courts of the Commonwealth, and no civil action need be filed in the circuit court of the Commonwealth.

E. The provisions of this article shall be in addition to other procedures authorized in the Code of Virginia and the rules of court for obtaining discovery.

§ 8.01-412.11. Service of subpoena.

A subpoena issued by a clerk of court under this article shall be served in compliance with the applicable statutes of the Commonwealth for service of a subpoena.

§ 8.01-412.12. Deposition, production, and inspection.

Statutes and rules applicable in actions pending in the circuit courts of the Commonwealth with respect to compliance with subpoenas to attend and give testimony, produce designated books,

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59 documents, records, electronically stored information, or tangible things, or permit inspection of
60 premises, shall apply to subpoenas issued under § 8.01-412.10.

61 § 8.01-412.13. Application to court.

62 An application to the court for a protective order or to enforce, quash, or modify a subpoena issued
63 by a clerk of court under § 8.01-412.10 shall comply with the statutes and rules of court of the
64 Commonwealth and be submitted to the court in the circuit in which discovery is to be conducted. A
65 separate civil action need not be filed.

66 § 8.01-412.14. Uniformity of application and construction; reciprocal privileges.

67 In applying and construing this uniform act, consideration shall be given to the need to promote
68 uniformity of the law with respect to its subject matter among states that enact it. The privilege extended
69 to persons in other states for discovery under this article shall only apply if the jurisdiction where the
70 action is pending has extended a similar privilege to persons in the Commonwealth, by that
71 jurisdiction's enactment of the Uniform Interstate Depositions and Discovery Act, a predecessor uniform
72 act, or another comparable law or rule of court providing substantially similar mechanisms for use by
73 out-of-state parties.

74 § 8.01-412.15. Application to pending actions.

75 This article applies to requests for discovery submitted on or after July 1, 2009.

76 **2. That Article 6 (§§ 8.01-411 through 8.01-412.1) of Chapter 14 of Title 8.01 of the Code of**
77 **Virginia is repealed.**