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HOUSE BILL NO. 102

Offered January 11, 2012

Prefiled December 29, 2011

A BILL to amend and reenact §§ 8.01-630, 8.01-631, and 8.01-676.1 of the Code of Virginia, relating to injunction bonds.

Patron—Loupassi

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-630, 8.01-631, and 8.01-676.1 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-630. Forthcoming bond in connection with injunction against removal of property.

A court awarding ~~an~~ *a temporary* injunction to restrain the removal of property out of this Commonwealth may require bond with security to be given before such officer and in such penalty as the court may direct, with condition to have the property forthcoming to abide the future order or decree of the court and, unless such bond be given, may order the officer serving its process to take possession of the property and keep it until the bond be given or until further order of the court.

§ 8.01-631. Injunction bond.

A. Except in the case of a fiduciary or any other person from whom in the opinion of the court awarding an injunction it may be improper or unnecessary to require bond, no *temporary* injunction shall take effect until bond be given in such penalty as the court awarding it may direct, with condition either to pay the judgment or decree, proceedings on which are enjoined, or to pay the value of the property levied on by the officer, when there has been a levy, or to have the property forthcoming to abide the future order or decree of court, and, in either case, to pay all such costs as may be awarded against the party obtaining the injunction, and all such damages as may be incurred, in case the injunction shall be dissolved, and with a further condition, if a forthcoming bond has been given under such judgment or decree, to indemnify and save harmless the sureties in such forthcoming bond and their representatives against all loss or damage in consequence of such suretyship, or, if the injunction be not to proceedings on a judgment or decree the movant gives bond with security in an amount that the trial court considers proper to pay the costs and damages sustained by any party found to have been incorrectly enjoined, with such ~~condition~~ conditions as the trial court or judge may prescribe.

B. When an appeal is taken from an interlocutory order or final judgment granting, dissolving, or denying a permanent injunction, and while the appeal is pending, the trial court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

C. The bond shall be given before the clerk of the court in which the judgment or decree is, and, in other cases, before the clerk of the court in which the suit is, wherein the injunction is awarded.

D. An order by the trial court under subsection A or B may be modified or vacated by the appellate court having jurisdiction over the appeal in accordance with § 8.01-676.1.

E. For any temporary or permanent injunction sought by, or awarded to, the Commonwealth, or any of its officers or agencies, no bond shall be required.

§ 8.01-676.1. Security for appeal.

A. Security for costs of appeal of right to Court of Appeals. - A party filing a notice of an appeal of right to the Court of Appeals shall simultaneously file an appeal bond or irrevocable letter of credit in the penalty of \$500, or such sum as the trial court may require, subject to subsection E, conditioned upon paying all costs and fees incurred in the Court of Appeals and the Supreme Court if it takes cognizance of the claim. If the appellant wishes suspension of execution, the security shall also be conditioned and shall be in such sum as the trial court may require as provided in subsection C.

B. Security for costs on petition for appeal to Court of Appeals or Supreme Court. - An appellant whose petition for appeal is granted by the Court of Appeals or the Supreme Court shall (if he has not done so) within 15 days from the date of the Certificate of Appeal file an appeal bond or irrevocable letter of credit in the same penalty as provided in subsection A, conditioned on the payment of all damages, costs, and fees incurred in the Court of Appeals and in the Supreme Court.

C. Security for suspension of execution. - An appellant who wishes execution of the judgment or award from which an appeal is sought to be suspended during the appeal shall, subject to the provisions of subsection J, file an appeal bond or irrevocable letter of credit conditioned upon the performance or satisfaction of the judgment and payment of all damages incurred in consequence of such suspension,

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59 and except as provided in subsection D, execution shall be suspended upon the filing of such security
60 and the timely prosecution of such appeal. Such security shall be continuing and additional security shall
61 not be necessary except as to any additional amount which may be added or to any additional
62 requirement which may be imposed by the courts.

63 D. Suspension of execution in decrees for support and custody; injunctions. - The court from which
64 an appeal is sought may refuse to suspend the execution of decrees for support and custody, and may
65 also refuse suspension when a judgment refuses, grants, modifies, or dissolves an injunction.

66 E. Increase or decrease in penalty or other modification of security. - The Court of Appeals or the
67 Supreme Court, when it considers a petition for appeal, may order that the penalty or any other terms or
68 requirements of the security for the appeal or of the security for the suspension of execution of a
69 judgment be modified for good cause shown if such request is made in the brief of any party filed in
70 the Court of Appeals, or in the Petition for Appeal or the appellee's Brief in Opposition filed in the
71 Supreme Court or the Court of Appeals. Affidavits and counter-affidavits may be filed by the parties
72 containing facts pertinent to such request. Any increase or decrease in the amount of or other
73 modification of the security so ordered shall be effected in the clerk's office of the trial court within 15
74 days of the order of the Court of Appeals or the Supreme Court. If an increase so ordered is not
75 effected within 15 days, the appeal shall be dismissed, in the case of the security required under
76 subsection A, or the suspension of execution of a judgment shall be discontinued, in the case of the
77 security required under subsection C. Such increase or decrease in the penalty of or other modification
78 of the security may also be considered and ordered by the trial court for good cause shown, on motion
79 of either party, at any time until the Court of Appeals or the Supreme Court acts upon any similar
80 motion, and failure to increase such penalty as hereinabove provided shall also cause the appeal to be
81 dismissed, in the case of the security required under subsection A, or the suspension of execution of a
82 judgment to be discontinued, in the case of the security required under subsection C.

83 F. By whom executed. - Each bond filed shall be executed by a party or another on his behalf, and
84 by surety approved by the clerk of the court from which appeal is sought, or by the clerk of the
85 Supreme Court or the clerk of the Court of Appeals if the bond is ordered by such Court. Any letter of
86 credit posted as security for an appeal shall be in a form acceptable to the clerk of the court from which
87 appeal is sought, or by the clerk of the Supreme Court or the Court of Appeals if the security is ordered
88 by such court. The letter of credit shall be from a bank incorporated or authorized to conduct banking
89 business under the laws of this Commonwealth or authorized to do business in this Commonwealth
90 under the banking laws of the United States, or a federally insured savings institution located in this
91 Commonwealth.

92 G. Appeal from State Corporation Commission; security for costs. - When an appeal of right is
93 entered from the State Corporation Commission to the Supreme Court, and no suspension of the order,
94 judgment, or decree appealed from is requested, such appeal bond or letter of credit shall be filed when
95 and in the amount required by the clerk of the Supreme Court, whose action shall be subject to review
96 by the Supreme Court.

97 H. Appeal from State Corporation Commission; suspension. - Any judgment, order, or decree of the
98 State Corporation Commission subject to appeal to the Supreme Court may be suspended by the
99 Commission or by the Supreme Court pending decision of the appeal if the Commission or the Supreme
100 Court deems such suspension necessary for the proper administration of justice but only upon the
101 written application of an appellant after reasonable notice to all other parties in interest and the filing of
102 a suspending bond or irrevocable letter of credit with such conditions, in such penalty, and with such
103 surety thereon as the Commission or the Supreme Court may deem sufficient. But no surety shall be
104 required if the appellant is any county, city or town of this Commonwealth, or the Commonwealth.

105 I. Forms of bonds; letters of credit; where filed. - The Clerk of the Supreme Court shall prescribe
106 separate forms for appeal bonds, one for costs alone, one for suspension of execution, and one for both
107 and a form for irrevocable letters of credit, to which the bond or bonds or irrevocable letters of credit
108 given shall substantially conform. The forms for each bond and the letter of credit shall be published in
109 the Rules of Court. It shall be sufficient if the bond or letter of credit, when executed as required, is
110 filed with the trial court, clerk of the Virginia Workers' Compensation Commission, or the clerk of the
111 State Corporation Commission, whichever is applicable, and no personal appearance in the trial court,
112 Virginia Workers' Compensation Commission, or State Corporation Commission by the principal, the
113 surety on the bond or the bank issuing the letter of credit shall be required as a condition precedent to
114 its filing.

115 J. In any civil litigation under any legal theory, the amount of the appeal bond or irrevocable letter
116 of credit to be furnished during the pendency of all appeals or discretionary reviews of any judgment
117 granting legal, equitable, or any other form of relief in order to stay the execution thereon during the
118 entire course of appellate review by any courts shall be set in accordance with applicable laws or court
119 rules, except that the total appeal bond or irrevocable letter of credit that is required of an appellant and
120 all of its affiliates shall not exceed \$25 million, regardless of the value of the judgment.

J1. Any objection to or motion for modification of the form, amount, or issuer of any letter of credit or bond may be made to, and decided by, the Court of Appeals or the Supreme Court. Any objection to or motion for modification of the form, amount, or issuer of any letter of credit or bond may also be made to, and decided by, the court or commission whose decision is being appealed at any time until the Court of Appeals or the Supreme Court acts upon any similar motion.

K. Dissipation of assets. - If the appellee proves by a preponderance of the evidence that a party bringing an appeal, for whom the appeal bond or irrevocable letter of credit requirement has been limited or waived pursuant to subsection J, is purposefully dissipating its assets or diverting assets outside the jurisdiction of the United States courts for the purpose of evading the judgment, the limitation or waiver granted pursuant to subsection J shall be rescinded and a court may require the appellant to post a bond or irrevocable letter of credit in an amount up to the full amount of the judgment. Dissipation of assets shall not include those ongoing expenditures made from assets of the kind that the appellant made in the regular course of business prior to the judgment being appealed, such as the payment of stock dividends and other financial incentives to the shareholders of publicly owned companies, continued participation in charitable and civic activities, and other expenditures consistent with the exercise of good business judgment.

L. For good cause shown, a court may otherwise waive the filing of an appeal bond or irrevocable letter of credit as to the damages in excess of, or other than, the compensatory damages.

M. Exemption. - When an appeal is proper to protect the estate of a decedent or person under disability, or to protect the interest of the Commonwealth or any county, city, or town of this Commonwealth, no security for appeal shall be required.

N. Indigents. - No person who is an indigent shall be required to post security for an appeal bond.

O. Virginia Workers' Compensation Commission. - No claimant who files an appeal from a final decision of the Virginia Workers' Compensation Commission with the Court of Appeals shall be required to post security for costs as provided in subsection A or B of this section if such claimant has not returned to his employment or by reason of his disability is unemployed. Such claimant shall file an affidavit describing his disability and employment status with the Court of Appeals together with a motion to waive the filing of the security under subsection A or B of this section.

P. Time for filing security for appeal. - The appeal bond or letter of credit prescribed in subsections A and B is not jurisdictional and the time for filing such security in cases before the Court of Appeals or the Supreme Court may be extended by a judge or justice of the court before which the case is pending on motion for good cause shown and to attain the ends of justice.

Q. Consideration of appeal bond or letter of credit by Court of Appeals or Supreme Court. - A determination on an issue affecting an appeal bond or letter of credit in a case before the Court of Appeals or the Supreme Court may be considered by an individual judge of such court rather than by a panel of judges.

R. *This section applies to injunction bonds required pursuant to § 8.01-631.*