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HOUSE BILL NO. 1773

Offered January 9, 2013

Prefiled January 8, 2013

A BILL to amend and reenact § 8.01-380 of the Code of Virginia, relating to nonsuits; fees and costs.

Patrons—Albo, Howell, W.J., Cox, J.A., Crockett-Stark, Morris and Villanueva

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 8.01-380 of the Code of Virginia is amended and reenacted as follows:****§ 8.01-380. Dismissal of action by nonsuit; fees and costs.**

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

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

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

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

E. *If a nonsuit is taken within 14 days prior to trial or during trial and a new proceeding on the same cause of action is instituted in any court by the plaintiff in the prior nonsuited action, the court may, upon motion of the defendant, award reasonable attorney fees, expenses, and costs to any defendant who was also a defendant in the prior nonsuited action. A motion pursuant to this subsection may be made concurrent with or subsequent to the defendant's answer in the new proceeding. To the extent an award is made pursuant to this subsection, the award shall reasonably compensate the defendant for any fees, expenses, and costs paid or incurred by the defendant for the period between 14 days prior to trial and the time the nonsuit was taken that will be incurred again in the new proceeding, including fees, expenses, and costs related to witness and attorney preparation. An award made pursuant to this subsection shall not exceed \$25,000 or 10 percent of the amount of damages sought by the plaintiff in the new proceeding against the defendant requesting the award, whichever is greater.*

INTRODUCED

HB1773