CHAPTER 688

An Act to amend and reenact § 8.01-28 of the Code of Virginia, relating to judgment on affidavit in action upon contract or note; grounds for dismissal.

[S 230]

Approved April 6, 2014

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-28 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-28. When judgment to be given in action upon contract or note unless defendant appears and denies claim under oath.

In any action at law on a note or contract, express or implied, for the payment of money, or unlawful detainer pursuant to § 55-225 or § 55-248.31 for the payment of money or possession of the premises, or both, if (i) the plaintiff files with his motion for judgment or civil warrant an affidavit made by himself or his agent, stating therein to the best of the affiant's belief the amount of the plaintiff's claim, that such amount is justly due, and the time from which plaintiff claims interest, and (ii) a copy of the affidavit together with a copy of any account filed with the motion for judgment or warrant and, in actions pursuant to § 55-225 or § 55-248.31, proof of required notices is served on the defendant as provided in § 8.01-296 at the time a copy of the motion for judgment or warrant is so served, the plaintiff shall be entitled to a judgment on the affidavit and statement of account without further evidence unless the defendant either appears and pleads under oath or files with the court before the return date an affidavit or responsive pleading denying that the plaintiff is entitled to recover from the defendant on the claim. A denial by the defendant in general district court need not be in writing. The plaintiff or defendant shall, on motion, be granted a continuance whenever the defendant appears and pleads. If the defendant's pleading or affidavit admits that the plaintiff is entitled to recover from the defendant a sum certain less than that stated in the affidavit filed by the plaintiff, judgment may be taken by the plaintiff for the sum so admitted to be due, and the case will be tried as to the residue.

In the event of a defect in the affidavit, the plaintiff shall be entitled to a continuance.