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HOUSE BILL NO. 446

Offered January 13, 2016

Prefiled January 7, 2016

A BILL to amend and reenact §§ 8.01-28, 8.01-128, 8.01-375, and 16.1-88 of the Code of Virginia, relating to civil judgment procedure; damages, witnesses, failure of defendants to appear.

Patron—Loupassi

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-28, 8.01-128, 8.01-375, and 16.1-88 of the Code of Virginia are 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. *The court shall permit amendment of the amount of the plaintiff's claim requested in plaintiff's affidavit and statement of account filed in court along with his motion for judgment or civil warrant and shall enter a judgment for such amount due as of the date of the hearing.* 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.

§ 8.01-128. Verdict and judgment; damages.

A. If it appears that the plaintiff was forcibly or unlawfully turned out of possession, or that it was unlawfully detained from him, the verdict or judgment shall be for the plaintiff for the premises, or such part thereof as may be found to have been so held or detained. The verdict or judgment shall also be for such damages as the plaintiff may prove to have been sustained by him by reason of such forcible or unlawful entry, or unlawful detention, of such premises, and such rent as he may prove to have been owing to him.

B. The plaintiff may, alternatively, receive a final, appealable judgment for possession of the property unlawfully entered or unlawfully detained and be issued a writ of possession, and continue the case for up to 90 120 days to establish final rent and damages. If the plaintiff elects to proceed under this section, the judge shall hear evidence as to the issue of possession on the initial court date and shall hear evidence on the final rent and damages at the hearing set on the continuance date, unless the plaintiff requests otherwise or the judge rules otherwise. Nothing in this section shall preclude a defendant who appears in court at the initial court date from contesting an unlawful detainer action as otherwise provided by law.

If under this section an appeal is taken as to possession, the entire case shall be considered appealed. The plaintiff shall, in the instance of a continuance taken under this section, mail to the defendant at the defendant's last known address at least 15 days prior to the continuance date a notice advising of (i) the continuance date; (ii) the amounts of final rent and damages; and (iii) that the plaintiff is seeking judgment for additional sums. A copy of such notice shall be filed with the court.

C. No verdict or judgment rendered under this section shall bar any separate concurrent or future action for any such damages or rent as may not be so claimed.

§ 8.01-375. Exclusion of witnesses in civil cases (Subsection (a) of Supreme Court Rule 2:615 derived in part from this section and subsection (b) of Supreme Court Rule 2:615 derived from

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59 this section).

60 The court trying any civil case may upon its own motion and shall upon the motion of any party,
61 require the exclusion of every witness. However, *the following shall be exempt from the rule of this*
62 *section as a matter of right: (i) each named party who is an individual, (ii) one officer or agent of each*
63 *party which that is a corporation or association and, (iii) an attorney alleged in a habeas corpus*
64 *proceeding to have acted ineffectively shall be exempt from the rule of this section as a matter of right,*
65 *and (iv) in an unlawful detainer action filed in general district court, a managing agent as defined in §*
66 *55-248.4.*

67 Where expert witnesses are to testify in the case, the court may, at the request of all parties, allow
68 one expert witness for each party to remain in the courtroom; however, in cases pertaining to the
69 distribution of marital property pursuant to § 20-107.3 or the determination of child or spousal support
70 pursuant to § 20-108.1, the court may, upon motion of any party, allow one expert witness for each
71 party to remain in the courtroom throughout the hearing.

72 **§ 16.1-88. Procedure when plaintiff sues on sworn claim.**

73 If a civil action in a general district court is upon a contract, express or implied, for the payment of
74 money, or unlawful detainer pursuant to § 55-225 or § 55-248.31 for the payment of money or
75 possession of the premises, or both, or is brought by the Commonwealth or any political subdivision or
76 agency thereof for the collection of taxes or to enforce any other obligation for the payment of money,
77 an affidavit and a copy of the account if there be one and, in actions pursuant to § 55-225 or
78 § 55-248.31, proof of required notice may be made and served on the defendant in accordance with
79 § 8.01-296 with the warrant or motion for judgment as provided in § 8.01-28 for actions at law,
80 whereupon the provisions of § 8.01-28 shall be applicable to the further proceedings therein. The
81 affidavit and the account if there is one and proof of appropriate notice may be attached to the warrant
82 or motion; in which event the combined papers shall be served as a single paper.