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HOUSE BILL NO. 446

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Obenshain
on February 24, 2016)

(Patron Prior to Substitute—Delegate Loupassi)

A *BILL to amend and reenact §§ 8.01-128 and 8.01-375 of the Code of Virginia, relating to civil judgment procedure; damages; witnesses.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-128 and 8.01-375 of the Code of Virginia are amended and reenacted as follows:

§ 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 this section).

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

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