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HOUSE BILL NO. 858

Offered January 10, 2018

Prefiled January 9, 2018

A *BILL to amend the Code of Virginia by adding sections numbered 8.01-420.02 and 8.01-420.4:1, relating to scope of discovery; deposing certain corporate officers.*

Patron—Peace

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 8.01-420.02 and 8.01-420.4:1 as follows:

§ 8.01-420.02. Scope of discovery.

In addition to any Rules of Supreme Court of Virginia not in conflict, parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action and proportional to the needs of the case. In making any determination of whether discovery is unduly burdensome or expensive, the court shall consider whether the burden or expense of the proposed discovery outweighs its likely benefit.

§ 8.01-420.4:1. Taking of depositions; corporate officers or executives.

A. For the purposes of this section "officer" means the chief executive officer, chief operating officer, chief financial officer, or other person in charge of a principal business unit or function of a public or private corporation, partnership, association, other corporate entity, or state or local governmental agency.

B. When a deponent who is an officer, or a public or private corporation, partnership, association, other corporate entity, or state or local governmental agency acting on such officer's behalf, files a motion for a protective order in response to a subpoena requiring the deposition of such officer because the discovery is obtainable from some other source that is more convenient, less burdensome, or less expensive, in order to defeat such motion, the burden shall be on the party seeking the deposition to show that (i) there is a reasonable indication that the officer's deposition is calculated to lead to the discovery of admissible evidence, (ii) the officer has unique or superior personal knowledge of discoverable information that cannot be discovered through means other than a deposition, and (iii) deposition of a representative other than the officer or other methods of discovery are unsatisfactory, insufficient, or inadequate.

C. If a protective order is issued, the officer's corporation, partnership, association, entity, or governmental agency shall name a designee to be deposed on its behalf pursuant to Rule 4:5(b)(6) of the Rules of Supreme Court of Virginia, unless the court finds there is an alternative means of discovery.

D. If a protective order is issued and the party seeking the deposition subsequently learns that the requirements set forth in subsection B can be met, then the party seeking the deposition may file for modification or lifting of the protective order.

2. That the provisions of this act adding § 8.01-420.4:1 to the Code of Virginia apply to a subpoena issued pursuant to the Uniform Interstate Depositions and Discovery Act (§ 8.01-412.8 et seq.) consistent with the provisions of subsection E of § 8.01-412.10.

INTRODUCED

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