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## HOUSE BILL NO. 466

House Amendments in [ ] — February 12, 1996

A BILL to amend and reenact §§ 8.01-407, 16.1-89 and 16.1-265 of the Code of Virginia, relating to issuance of a summons.

Patrons—Davies, Baker, Bennett, Deeds, Johnson, Jones, J.C. and Mims

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 8.01-407, 16.1-89 and 16.1-265 of the Code of Virginia are amended and reenacted as follows:**

§ 8.01-407. How summons for witness issued, and to whom directed; prior permission of court to summon certain officials and judges; attendance before commissioner of other state.

A. A summons may be issued, directed as prescribed in § 8.01-292, commanding the officer to summon any person to attend on the day and at the place that such attendance is desired, to give evidence before a court, grand jury, arbitrators, magistrate, notary, or any commissioner or other person appointed by a court or acting under its process or authority in a judicial or quasi-judicial capacity. The summons may be issued, if the attendance be desired at a court or in a proceeding pending in a court, by the clerk thereof, and the clerk shall not impose any time restrictions limiting the right to properly request a summons up to and including the date of the proceeding; if before a commissioner in chancery or other commissioner of a court, by the clerk of the court in which the matter is pending, or by such commissioner in chancery or other commissioner; if before a notary or other officer taking a deposition, by such notary or other officer at the instance of the attorney desiring the attendance of the person sought; if before a grand jury, by the attorney for the Commonwealth, or the clerk of the court, at the instance of the attorney for the Commonwealth; and in other cases, by the clerk of the circuit court of the county or city in which the attendance is desired. It shall express on whose behalf, and in what case or about what matter, the witness is to attend. Failure to respond to any such summons shall be punishable by the court in which the proceeding is pending as for contempt.

[ ~~Such a summons may also be issued in a pending case by an attorney-at-law as provided by the Rules of the Supreme Court.~~ In any civil proceeding, except under Article 3 (§ 8.01-654 et seq.) of Chapter 25 of Title 8.01, such a summons may also be issued by an attorney-at-law as provided by the Rules of the Supreme Court. ]

B. No subpoena shall, without permission of the court first obtained, issue for the attendance of the Governor, Lieutenant Governor, or Attorney General of this Commonwealth, or a judge of any court thereof; the President or Vice-President of the United States; any member of the President's Cabinet; any ambassador or consul; or any military officer on active duty holding the rank of admiral or general.

C. This section shall be deemed to authorize a summons to compel attendance of a citizen of the Commonwealth before commissioners or other persons appointed by authority of another state when the summons requires the attendance of such witness at a place not out of his county or city.

§ 16.1-89. Subpoena duces tecum.

A judge or clerk of a district court may issue a subpoena duces tecum pursuant to the terms of Rule 4:9 of the Rules of the Supreme Court of Virginia except that such subpoena may be directed to a party to the case as well as to a person who is not a party. [ ~~Such a subpoena may also be issued in a pending case by an attorney-at-law as provided by the Rules of the Supreme Court.~~ In any civil proceeding, except under Article 3 (§ 8.01-654 et seq.) of Chapter 25 of Title 8.01, such a subpoena may also be issued by an attorney-at-law as provided by the Rules of the Supreme Court. ]

§ 16.1-265. Subpoena.

Upon application of a party and pursuant to the rules of the Supreme Court of Virginia for the issuance of subpoenas, the clerk of the court shall issue, and the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents or other tangible objects at any hearing. [ ~~Such a subpoena may also be issued in a pending case by an attorney-at-law as provided by the Rules of the Supreme Court.~~ In any civil proceeding, except under Article 3 (§ 8.01-654 et seq.) of Chapter 25 of Title 8.01, such a subpoena may also be issued by an attorney-at-law as provided by the Rules of the Supreme Court. ]

**2. That the Supreme Court shall by rule provide for the issuance of a summons or subpoena in a pending case by an attorney-at-law as authorized by this act upon such terms and conditions as the Court deems appropriate.**

ENGROSSED

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