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HOUSE BILL NO. 105

Offered January 13, 2010

Prefiled January 5, 2010

A BILL to amend and reenact § 8.01-676.1 of the Code of Virginia, relating to security for appeal; modification.

Patrons—Loupassi; Senator: Stosch

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-676.1 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-676.1. Security for appeal.

A. Security for costs of appeal of right to Court of Appeals. - A party filing a notice of an appeal of right to the Court of Appeals shall simultaneously file an appeal bond or irrevocable letter of credit in the penalty of \$500, or such sum as the trial court may require, subject to subsection E, conditioned upon paying all costs and fees incurred in the Court of Appeals and the Supreme Court if it takes cognizance of the claim. If the appellant wishes suspension of execution, the security shall also be conditioned as provided in subsection C and shall be in such sum as the trial court may require as provided in subsection C.

B. Security for costs on petition for appeal to Court of Appeals or Supreme Court. - An appellant whose petition for appeal is granted by the Court of Appeals or the Supreme Court shall (if he has not done so) within 15 days from the date of the Certificate of Appeal file an appeal bond or irrevocable letter of credit in the same penalty as provided in subsection A, conditioned on the payment of all damages, costs, and fees incurred in the Court of Appeals and in the Supreme Court.

C. Security for suspension of execution. - An appellant who wishes execution of the judgment or award from which an appeal is sought to be suspended during the appeal shall, subject to the provisions of subsection J, file an appeal bond or irrevocable letter of credit conditioned upon the performance or satisfaction of the judgment and payment of all damages incurred in consequence of such suspension, and except as provided in subsection D, execution shall be suspended upon the filing of such security and the timely prosecution of such appeal. Such security shall be continuing and additional security shall not be necessary except as to any additional amount which may be added or to any additional requirement which may be imposed by the courts.

D. Suspension of execution in decrees for support and custody; injunctions. - The court from which an appeal is sought may refuse to suspend the execution of decrees for support and custody, and may also refuse suspension when a judgment refuses, grants, modifies, or dissolves an injunction.

E. Increase or decrease in penalty or other modification of security. - The Court of Appeals or the Supreme Court, when it considers a petition for appeal, may order that the penalty or any other terms or requirements of the security for the appeal be decreased or increased or of the security for the suspension of execution of a judgment be modified for good cause shown if such request is made in the brief of any party filed in the Court of Appeals, or in the Petition for Appeal or the appellee's Brief in Opposition filed in the Supreme Court or the Court of Appeals. Affidavits and counter-affidavits may be filed by the parties containing facts pertinent to such request. Any increase or decrease in the amount of or other modification of the security so ordered shall be effected in the clerk's office of the trial court within 15 days of the order of the Court of Appeals or the Supreme Court. If an increase so ordered is not effected within 15 days, the appeal shall be dismissed, in the case of the security required under subsection A, or the suspension of execution of a judgment shall be discontinued, in the case of the security required under subsection C. Such increase or decrease in the penalty of or other modification of the security may also be considered and ordered by the trial court for good cause shown, on motion of either party, at any time until the Court of Appeals or the Supreme Court acts upon the amount of penalty any similar motion, and failure to increase such penalty as hereinabove provided shall also cause the appeal to be dismissed, in the case of the security required under subsection A, or the suspension of execution of a judgment to be discontinued, in the case of the security required under subsection C.

F. By whom executed. - Each bond filed shall be executed by a party or another on his behalf, and by surety approved by the clerk of the court from which appeal is sought, or by the clerk of the Supreme Court or the clerk of the Court of Appeals if the bond is ordered by such Court. Upon the request of any party at the time the bond is originally proposed or approved, the surety on any bond shall be an insurance company that meets the requirements of clause (i) or (ii) of subdivision D 4 of § 8.01-424 or cash in lieu thereof. Any letter of credit posted as security for an appeal shall be in a

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59 form acceptable to the clerk of the court from which appeal is sought, or by the clerk of the Supreme
60 Court or the Court of Appeals if the security is ordered by such court. The letter of credit shall be from
61 a bank incorporated or authorized to conduct banking business under the laws of this Commonwealth or
62 authorized to do business in this Commonwealth under the banking laws of the United States, or a
63 federally insured savings institution located in this Commonwealth.

64 G. Appeal from State Corporation Commission; security for costs. - When an appeal of right is
65 entered from the State Corporation Commission to the Supreme Court, and no suspension of the order,
66 judgment, or decree appealed from is requested, such appeal bond or letter of credit shall be filed when
67 and in the amount required by the clerk of the Supreme Court, whose action shall be subject to review
68 by the Supreme Court.

69 H. Appeal from State Corporation Commission; suspension. - Any judgment, order, or decree of the
70 State Corporation Commission subject to appeal to the Supreme Court may be suspended by the
71 Commission or by the Supreme Court pending decision of the appeal if the Commission or the Supreme
72 Court deems such suspension necessary for the proper administration of justice but only upon the
73 written application of an appellant after reasonable notice to all other parties in interest and the filing of
74 a suspending bond or irrevocable letter of credit with such conditions, in such penalty, and with such
75 surety thereon as the Commission or the Supreme Court may deem sufficient. But no surety shall be
76 required if the appellant is any county, city or town of this Commonwealth, or the Commonwealth.

77 I. Forms of bonds; letters of credit; where filed. - The Clerk of the Supreme Court shall prescribe
78 separate forms for appeal bonds, one for costs alone, one for suspension of execution, and one for both
79 and a form for irrevocable letters of credit, to which the bond or bonds or irrevocable letters of credit
80 given shall substantially conform. The forms for each bond and the letter of credit shall be published in
81 the Rules of Court. It shall be sufficient if the bond or letter of credit, when executed as required, is
82 filed with the trial court, clerk of the Virginia Workers' Compensation Commission, or the clerk of the
83 State Corporation Commission, whichever is applicable, and no personal appearance in the trial court,
84 Virginia Workers' Compensation Commission, or State Corporation Commission by the principal, the
85 surety on the bond or the bank issuing the letter of credit shall be required as a condition precedent to
86 its filing.

87 J. In any civil litigation under any legal theory, the amount of the appeal bond or irrevocable letter
88 of credit to be furnished during the pendency of all appeals or discretionary reviews of any judgment
89 granting legal, equitable, or any other form of relief in order to stay the execution thereon during the
90 entire course of appellate review by any courts shall be set in accordance with applicable laws or court
91 rules, except that the total appeal bond or irrevocable letter of credit that is required of an appellant and
92 all of its affiliates shall not exceed \$25 million, regardless of the value of the judgment.

93 *Jl. Any objection to or motion for modification of the form, amount, or issuer of any letter of credit*
94 *or bond may be made to, and decided by, the Court of Appeals or the Supreme Court. Any objection to*
95 *or motion for modification of the form, amount, or issuer of any letter of credit or bond may also be*
96 *made to, and decided by, the court or commission whose decision is being appealed at any time until*
97 *the Court of Appeals or the Supreme Court acts upon any similar motion.*

98 K. Dissipation of assets. - If the appellee proves by a preponderance of the evidence that a party
99 bringing an appeal, for whom the appeal bond or irrevocable letter of credit requirement has been
100 limited or waived pursuant to subsection J, is purposefully dissipating its assets or diverting assets
101 outside the jurisdiction of the United States courts for the purpose of evading the judgment, the
102 limitation or waiver granted pursuant to subsection J shall be rescinded and a court may require the
103 appellant to post a bond or irrevocable letter of credit in an amount up to the full amount of the
104 judgment. Dissipation of assets shall not include those ongoing expenditures made from assets of the
105 kind that the appellant made in the regular course of business prior to the judgment being appealed,
106 such as the payment of stock dividends and other financial incentives to the shareholders of publicly
107 owned companies, continued participation in charitable and civic activities, and other expenditures
108 consistent with the exercise of good business judgment.

109 L. For good cause shown, a court may otherwise waive the filing of an appeal bond or irrevocable
110 letter of credit as to the damages in excess of, or other than, the compensatory damages.

111 M. Exemption. - When an appeal is proper to protect the estate of a decedent or person under
112 disability, or to protect the interest of the Commonwealth or any county, city, or town of this
113 Commonwealth, no security for appeal shall be required.

114 N. Indigents. - No person who is an indigent shall be required to post security for an appeal bond.

115 O. Virginia Workers' Compensation Commission. - No claimant who files an appeal from a final
116 decision of the Virginia Workers' Compensation Commission with the Court of Appeals shall be
117 required to post security for costs as provided in subsection A or B of this section if such claimant has
118 not returned to his employment or by reason of his disability is unemployed. Such claimant shall file an
119 affidavit describing his disability and employment status with the Court of Appeals together with a
120 motion to waive the filing of the security under subsection A or B of this section.

121 P. Time for filing security for appeal. - The appeal bond or letter of credit prescribed in subsections
122 A and B is not jurisdictional and the time for filing such security in cases before the Court of Appeals
123 or the Supreme Court may be extended by a judge or justice of the court before which the case is
124 pending on motion for good cause shown and to attain the ends of justice.
125 Q. Consideration of appeal bond or letter of credit by Court of Appeals *or Supreme Court*. - A
126 determination on an issue affecting an appeal bond or letter of credit in a case before the Court of
127 Appeals *or the Supreme Court* may be considered by an individual judge of such court rather than by a
128 panel of judges.