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SENATE BILL NO. 154

Offered January 13, 2010

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A *BILL to amend and reenact §§ 6.1-118.1, 8.01-66, 8.01-66.2, 8.01-416, 8.01-504, 8.01-512.2, 8.01-672, 8.01-682, 8.2-201, 16.1-105, 17.1-605, 17.1-624, 19.2-69, 21-186, 38.2-807, 43-3, 43-24, 46.2-364, 46.2-601, and 58.1-3959 of the Code of Virginia, relating to increasing various costs, fees, penalties, etc.*

Patron—Edwards

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-118.1, 8.01-66, 8.01-66.2, 8.01-416, 8.01-504, 8.01-512.2, 8.01-672, 8.01-682, 8.2-201, 16.1-105, 17.1-605, 17.1-624, 19.2-69, 21-186, 38.2-807, 43-3, 43-24, 46.2-364, 46.2-601, and 58.1-3959 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-118.1. Recovery of costs in civil actions for bad checks.

A. In any civil action by a holder to recover the sum payable of a check drawn by the defendant on which payment has been refused by the payor bank because the drawer had no account or insufficient funds, or in any civil action following an arrest under § 18.2-181 or § 18.2-182, the court, upon a determination that the plaintiff has prevailed, shall add the following amounts, as costs, to the amount due to the plaintiff for the check: (i) the sum of ~~ten dollars~~ \$30 to defray the cost of processing the returned check; and (ii) the base wage of one employee for time actually spent acting as a witness for the Commonwealth; provided, however, that the total amount of allowable costs granted under the provisions of this section shall not exceed the sum of \$250 excluding restitution for the amount of the check.

B. Such award of costs shall be contingent upon a finding (i) that the plaintiff complied with the provisions in § 18.2-183 relating to notice and (ii) that the defendant failed to deliver payment or evidence of bank error to the plaintiff within five days after receipt of such notice.

§ 8.01-66. Recovery of damages for loss of use of vehicle.

A. Whenever any person is entitled to recover for damage to or destruction of a motor vehicle, he shall, in addition to any other damages to which he may be legally entitled, be entitled to recover the reasonable cost which was actually incurred in hiring a comparable substitute vehicle for the period of time during which such person is deprived of the use of his motor vehicle. However, such rental period shall not exceed a reasonable period of time for such repairs to be made or if the original vehicle is a total loss, a reasonable time to purchase a new vehicle. Nothing herein contained shall relieve the claimant of the duty to mitigate damages.

B. Whenever any insurance company licensed in this Commonwealth to write insurance as defined in § 38.2-124 or any self-insured company refuses or fails to provide a comparable temporary substitute vehicle to any person entitled to recover the actual cost of hiring a substitute vehicle as set forth in subsection A, and if the trial judge of a court of proper jurisdiction subsequently finds that such refusal or failure was not made in good faith, such company shall be liable to that person in the amount of \$500 or double the amount of the rental cost he is entitled to recover under subsection A ~~of this section~~, whichever amount is greater. If the trial court finds that an action brought against an insurance company or any self-insured company under subsection B ~~of this section~~ is frivolous, or not to have been brought in good faith, the court may in its discretion require the plaintiff to pay the reasonable attorney's fees, not to exceed ~~\$200~~ \$350, incurred by the defendant in defending the action. This section shall in no way preclude any party from seeking such additional common law remedies as might otherwise be available.

§ 8.01-66.2. Lien against person whose negligence causes injury.

Whenever any person sustains personal injuries caused by the alleged negligence of another and receives treatment in any hospital, public or private, or nursing home, or receives medical attention or treatment from any physician, or receives nursing service or care from any registered nurse, or receives physical therapy treatment from any registered physical therapist in this Commonwealth, or receives medicine from a pharmacy, or receives any ambulance service, such hospital, nursing home, physician, nurse, physical therapist, pharmacy or ambulance service shall each have a lien for the amount of a just and reasonable charge for the service rendered, but not exceeding ~~\$2,000~~ \$2,500 in the case of a hospital or nursing home, ~~\$500~~ \$750 for each physician, nurse, physical therapist, or pharmacy, and \$200 for each ambulance service on the claim of such injured person or of his personal representative

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59 against the person, firm or corporation whose negligence is alleged to have caused such injuries.

60 § 8.01-416. Affidavit re damages to motor vehicle.

61 A. In a civil action in any court, whether sounding in contract or tort, to recover for damages to a
62 motor vehicle in excess of ~~\$1,000~~ \$2,500, evidence as to such damages may be presented by an
63 itemized estimate or appraisal sworn to by a person who also makes oath (i) that he is a motor vehicle
64 repairman, estimator or appraiser qualified to determine the amount of such damage or diminution in
65 value; (ii) as to the approximate length of time that he has engaged in such work; and (iii) as to the
66 trade name and address of his business and employer. Such estimate shall not be admitted unless by
67 consent of the adverse party or his counsel, or unless a true copy thereof is mailed or delivered to the
68 adverse party or his counsel not less than seven days prior to the date fixed for trial.

69 B. In a civil action in any court, whether sounding in contract or tort, to recover for damages to a
70 motor vehicle of ~~\$1,000~~ \$2,500 or less, evidence as to such damages may be presented by an itemized
71 estimate or appraisal sworn to by a person who also makes oath (i) that he is a motor vehicle repairman,
72 estimator or appraiser qualified to determine the amount of such damage or diminution in value; (ii) as
73 to the approximate length of time that he has engaged in such work; and (iii) as to the trade name and
74 address of his business and employer.

75 § 8.01-504. Penalty for service of notice of lien when no judgment exists.

76 Whoever causes to be served a notice of lien of a writ of fieri facias without there being a judgment
77 against the defendant named therein, shall pay to him the sum of ~~\$100~~ \$350, and whoever serves a
78 notice of lien of a writ of fieri facias before the issuance of a writ of fieri facias, or after the return day
79 thereof, or serves or in any way gives a notice of a lien of fieri facias by means other than by service
80 by an officer authorized to serve civil process, shall pay to the named defendant the sum of ~~\$100~~ \$350,
81 to be recoverable as damages in an action at law, in addition to whatever damages may be alleged and
82 proven.

83 § 8.01-512.2. Fee for garnishee-employers.

84 Garnishee-employers may charge and collect a fee of up to ~~ten dollars~~ \$25 from a judgment-debtor
85 employee on account of such employers' expense in processing each garnishment summons served on
86 such employers on account of the judgment-debtor employee.

87 § 8.01-672. Jurisdictional amount.

88 No petition shall be presented for an appeal from any judgment of a circuit court except in cases in
89 which the controversy is for a matter of ~~\$500~~ \$2,000 or more in value or amount, and except in cases in
90 which it is otherwise expressly provided; nor to a judgment of any circuit court when the controversy is
91 for a matter less in value or amount than ~~\$500~~ \$2,000, exclusive of costs, unless there be drawn in
92 question a freehold or franchise or the title or bounds of land, or some other matter not merely
93 pecuniary.

94 § 8.01-682. What damages awarded appellee.

95 When any judgment is affirmed, damages shall be awarded to the appellee. Such damages, when the
96 judgment is for the payment of money, shall be the interest to which the parties are legally entitled,
97 from the time the appeal took effect, until the affirmance. Such interest shall be computed upon the
98 whole amount of the recovery, including interest and costs, and such damages shall be in satisfaction of
99 all interest during such period of time. When the judgment is not for the payment of any money, except
100 costs, the damages shall be such specific sum as the appellate court may deem reasonable, not being
101 more than ~~\$100~~ \$2,500 nor less than ~~\$30~~ \$750.

102 § 8.2-201. Formal requirements; statute of frauds.

103 (1) Except as otherwise provided in this section a contract for the sale of goods for the price of ~~\$500~~
104 \$5,000 or more is not enforceable by way of action or defense unless there is some writing sufficient to
105 indicate that a contract for sale has been made between the parties and signed by the party against
106 whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because
107 it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph
108 beyond the quantity of goods shown in such writing.

109 (2) Between merchants if within a reasonable time a writing in confirmation of the contract and
110 sufficient against the sender is received and the party receiving it has reason to know its contents, it
111 satisfies the requirements of subsection (1) against such party unless written notice of objection to its
112 contents is given within ~~ten~~ 10 days after it is received.

113 (3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other
114 respects is enforceable

115 (a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others
116 in the ordinary course of the seller's business and the seller, before notice of repudiation is received and
117 under circumstances which reasonably indicate that the goods are for the buyer, has made either a
118 substantial beginning of their manufacture or commitments for their procurement; or

119 (b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in
120 court that a contract for sale was made, but the contract is not enforceable under this provision beyond

the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (§ 8.2-606).

§ 16.1-105. Attachments.

The proceedings on any attachment brought in a court not of record shall conform to the provisions of Chapter 20 (§ 8.01-533 et seq.) of Title 8.01, but if an attachment is returned executed and the defendant has not been served with a copy thereof, and the amount claimed in the attachment does not exceed \$300 \$1,000, exclusive of interest and any attorney's fees contracted for in the instrument, the judge or clerk of the court, upon affidavit in conformity with §§ 8.01-316 and 8.01-317, shall forthwith cause a copy of the attachment to be posted at the front door of the courthouse of the county or the front door of the courtroom of the city or town wherein the attachment was issued, and shall file a certificate of the fact with the papers in the case, and, in addition to such posting, the plaintiff in the attachment or his attorney shall give to the judge or his clerk the last known address or place of abode of the defendant, verified by affidavit, and the judge or clerk shall forthwith mail a copy of the attachment to the defendant at his last known address or place of abode, or if the defendant be a corporation, at its last known address. The mailing of the copy as herein required shall be certified by the judge or clerk in writing, and such certification shall be filed with the papers in the case. Fifteen days after the copy of the attachment has been posted and a copy thereof mailed as herein required, the court may hear and decide the attachment. If the amount claimed in the attachment is more than \$300 \$1,000, exclusive of interest and any attorney's fees contracted for in the instrument, an order of publication shall be entered and published and other proceedings had in accordance with the provisions of §§ 8.01-316, 8.01-317, 8.01-318, and 8.01-320. Personal service on a nonresident defendant out of this Commonwealth as provided in § 8.01-320 shall have the same effect, and no other, as an order of publication duly executed or the posting and mailing of a copy of the attachment as provided herein.

If any such attachment is levied on real estate, the court shall not take cognizance of the case, but the same shall be forthwith removed to a court of record having jurisdiction of other actions removed therefrom, to be further proceeded with in such court of record as if the attachment had originated therein.

§ 17.1-605. Same; printing or otherwise reproducing brief and appendix.

Any party in whose favor costs are allowed in the Supreme Court shall have taxed as part of the costs the actual cost incurred by him in printing or otherwise any brief filed with the Court, not to exceed \$200 \$500 for all briefs filed and the actual cost incurred by him in printing or otherwise reproducing the appendix containing parts of the record filed with the Court, except that the Court for good cause may direct that such party shall recover less than the entire cost incurred by him in printing or otherwise reproducing (i) briefs filed by him (even though less than \$200 \$500) or (ii) the appendix.

§ 17.1-624. Who to tax costs.

The clerk of the court wherein any party recovers costs shall tax the same. ~~He shall include therein for the fee of such party's attorney, if he has one:~~

- ~~1. In a case of the Commonwealth, if no higher fee is allowed \$ 5.00~~
- ~~2. In a chancery cause other than a motion, when the matter in controversy exceeds \$100 in amount or value \$ 15.00~~
- ~~3. In the Court of Appeals \$ 50.00~~
- ~~4. In the Supreme Court \$ 50.00~~

~~In no case shall more than one fee be taxed against the same party, unless the court otherwise directs.~~

§ 19.2-69. Civil action for unlawful interception, disclosure or use.

Any person whose wire, electronic or oral communication is intercepted, disclosed or used in violation of this chapter shall (i) have a civil cause of action against any person who intercepts, discloses or uses, or procures any other person to intercept, disclose or use such communications, and (ii) be entitled to recover from any such person:

1. Actual damages but not less than liquidated damages computed at the rate of \$100 \$400 a day for each day of violation or \$1,000 \$4,000, whichever is higher;

2. Punitive damages; and

3. A reasonable attorney's fee and other litigation costs reasonably incurred.

A good faith reliance on a court order or legislative authorization shall constitute a complete defense to any civil or criminal action brought under this chapter or under any other law.

§ 21-186. Appeal from action fixing fees, etc.

From any action of the sanitation commission in prescribing fees, rents and charges, or either of them, pursuant to the provisions of this chapter, an appeal may be taken upon the petition of any county or city constituting a part of the district, or upon petition of any ~~fifty~~ 50 persons, resident or doing business in the district, to the State Corporation Commission. At least ~~sixty~~ 60 days prior to filing such

petition with the State Corporation Commission, such county, city or interested parties shall notify the sanitation commission of such intended petition and of the fees, rents and charges complained of, in order that the sanitation commission may be afforded an opportunity to make such changes in such fees, rents and charges as it shall deem proper. After such petition shall have been filed with the State Corporation Commission and after such county or city or other petitioners shall have, if required by the State Corporation Commission, executed and filed with the State Corporation Commission a bond payable to the Commonwealth and sufficient in amount, but not in excess of ~~\$500~~ \$5,000, and security to insure the prompt payment of all costs which may be assessed against such county or city or other petitioners, and after such county or city or other petitioners shall have caused to be published in at least one newspaper, designated by the commission and of general circulation within the district, such notice of such appeal as shall be prescribed by the State Corporation Commission, the State Corporation Commission is authorized to make such examinations and studies, to hold such hearings as may be required, to issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents before the State Corporation Commission or any officer or agent thereof, to administer oaths and to take testimony thereunder, and to fix in accordance with the provisions of this chapter applicable to the sanitation commission, subject to the right of further appeal by the sanitation commission or the interested parties to the Supreme Court, such fees, rents and charges. In each such appeal proceeding the State Corporation Commission shall ascertain the costs incurred by it, including in such costs actual expenses incurred and a fair apportionment of overhead expenses, and shall assess the same against either the petitioner or petitioners, or the sanitation commission, or shall apportion the costs between the petitioner or petitioners and the sanitation commission, according to principles applicable in courts of equity.

§ 38.2-807. Attorney fees.

A. In any action against an unlicensed insurer upon an insurance contract issued or delivered in this Commonwealth to a resident of this Commonwealth or to a corporation authorized to do business in this Commonwealth, the court may allow the plaintiff a reasonable attorney fee if (i) the insurer has failed to make payment in accordance with the terms of the contract for ~~thirty~~ 30 days after demand prior to the commencement of the action and (ii) the court concludes that the refusal was vexatious and without reasonable cause. The fee shall not exceed ~~± 1/2~~ 12.5 percent of the amount that the court or jury finds the plaintiff is entitled to recover against the insurer, but shall be at least ~~\$100~~ \$200.

B. Failure of the insurer to defend the action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

§ 43-3. Lien for work done and materials furnished; waiver of right to file or enforce lien.

A. All persons performing labor or furnishing materials of the value of ~~\$50~~ \$300 or more, including the reasonable rental or use value of equipment, for the construction, removal, repair or improvement of any building or structure permanently annexed to the freehold, and all persons performing any labor or furnishing materials of like value for the construction of any railroad, shall have a lien, if perfected as hereinafter provided, upon such building or structure, and so much land therewith as shall be necessary for the convenient use and enjoyment thereof, and upon such railroad and franchises for the work done and materials furnished, subject to the provisions of § 43-20. But when the claim is for repairs or improvements to existing structures only, no lien shall attach to the property repaired or improved unless such repairs or improvements were ordered or authorized by the owner, or his agent.

If the building or structure being constructed, removed or repaired is part of a condominium as defined in § 55-79.41 or under the Horizontal Property Act (§§ 55-79.1 through 55-79.38), any person providing labor or furnishing material to one or more units or limited common elements within the condominium pursuant to a single contract may perfect a single lien encumbering the one or more units which are the subject of the contract or to which those limited common elements pertain, and for which payment has not been made. All persons providing labor or furnishing materials for the common elements pertaining to all the units may perfect a single lien encumbering all such condominium units. Whenever a lien has been or may be perfected encumbering two or more units, the proportionate amount of the indebtedness attributable to each unit shall be the ratio that the percentage liability for common expenses appertaining to that unit computed pursuant to subsection D of § 55-79.83 bears to the total percentage liabilities for all units which are encumbered by the lien. The lien claimant shall release from a perfected lien an encumbered unit upon request of the unit owner as provided in subsection B of § 55-79.46 upon receipt of payment equal to that portion of the indebtedness evidenced by the lien attributable to such unit determined as herein provided. In the event the lien is not perfected, the lien claimant shall upon request of any interested party execute lien releases for one or more units upon receipt of payment equal to that portion of the indebtedness attributable to such unit or units determined as herein provided but no such release shall preclude the lien claimant from perfecting a single lien against the unreleased unit or units for the remaining portion of the indebtedness.

B. Any person providing labor or materials for site development improvements or for streets, stormwater facilities, sanitary sewers or water lines for the purpose of providing access or service to the

individual lots in a development or condominium units as defined in § 55-79.41 or under the Horizontal Property Act (§§ 55-79.1 through 55-79.38) shall have a lien on each individual lot in the development for that fractional part of the total cost of such labor or materials as is obtained by using "one" as the numerator and the number of lots as the denominator and in the case of a condominium on each individual unit in an amount computed by reference to the liability of that unit for common expenses appertaining to that condominium pursuant to subsection D of § 55-79.83; provided, however, no such lien shall be valid as to any lot or condominium unit unless the person providing such labor or materials shall, prior to the sale of such lot or condominium unit, file with the clerk of the circuit court of the jurisdiction in which such land lies a document setting forth a full disclosure of the nature of the lien to be claimed, the amount claimed against each lot or condominium unit and a description of the development or condominium, and shall, thereafter, comply with all other applicable provisions of this chapter. "Site development improvements" means improvements which are provided for the development, such as project site grading, rather than for an individual lot.

Nothing contained herein shall be construed to prevent the filing of a mechanic's lien under the provisions of subsection A.

C. Any right to file or enforce any mechanic's lien granted hereunder may be waived in whole or in part at any time by any person entitled to such lien.

§ 43-24. Liens of employees, suppliers, etc.

All conductors, brakemen, engine drivers, firemen, captains, stewards, pilots, clerks, depot or office agents, storekeepers, mechanics, traveling representatives or laborers, and all persons furnishing railroad iron, engines, cars, fuel and all other supplies necessary to the operation of any railway, canal or other transportation company, and all clerks, mechanics, traveling representatives, foremen, and laborers, and superintendents to the extent of not more than ~~twenty-five dollars~~ \$100 per week, who furnish their services or labor to any one or more individuals trading under a real or fictitious name, or names, or to any partnership or other unincorporated body of persons, engaged in mining or manufacturing, or to any mining or manufacturing company, whether such railway, canal or other transportation or mining or manufacturing company be chartered under or by the laws of this Commonwealth, or be chartered elsewhere and be doing business within the limits of this Commonwealth, shall have a prior lien on the franchises, gross earnings and on all the real and personal property of such individual, partnership, unincorporated association or company which is used in operating the same, to the extent of the moneys due them by the individual, partnership, unincorporated association or company for such wages or supplies, which lien shall be superior to, and have priority over, any amount due by such individual, partnership, unincorporated association or company for rents, or royalties.

No mortgage, deed of trust, sale, hypothecation or conveyance executed since the first day of May, 1888, shall defeat or take precedence over such lien. The lien secured by this section to parties furnishing supplies, shall be subordinate to that allowed to clerks, mechanics, foremen, superintendents, and laborers for services furnished as aforesaid.

If any person entitled to a lien as well under § 43-3 as under this section, shall perfect his lien given by either section, he shall not be entitled to the benefit of the other.

No right to or remedy upon a lien which has already accrued to any person shall be extended, abridged or otherwise affected hereby.

§ 46.2-364. Definitions.

For the purposes of this chapter, unless a different meaning is clearly required by the context:

"Conviction" means conviction on a plea of guilty or the determination of guilt by a jury or by a court though no sentence has been imposed or, if imposed, has been suspended and includes a forfeiture of bail or collateral deposited to secure appearance in court of the defendant unless the forfeiture has been vacated, in any case of a charge, the conviction of which requires or authorizes the Commissioner to suspend or revoke the license of the defendant;

"Insured" means the person in whose name a motor vehicle liability policy has been issued, as defined in this section, and any other person insured under its terms;

"Judgment" means any judgment for \$200 \$350 or more arising out of (i) a civil action filed pursuant to § 15.2-1716 or (ii) a motor vehicle accident because of injury to or destruction of property, including loss of its use, or any judgment for damages, including damages for care and loss of services, because of bodily injury to or death of any person arising out of the ownership, use or operation of any motor vehicle, including any judgment for contribution between joint tort-feasors arising out of any motor vehicle accident which occurred within the Commonwealth, except a judgment rendered against the Commonwealth, which has become final by expiration without appeal in the time within which an appeal might be perfected or by final affirmance on appeal rendered by a court of competent jurisdiction of the Commonwealth or any other state or court of the United States or Canada or its provinces;

"Motor vehicle" means every vehicle which is self-propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle and includes every device in, on or

305 by which any person or property is or can be transported or drawn on a highway, except devices moved
306 by human or animal power and devices used exclusively on rails or tracks, and vehicles used in the
307 Commonwealth but not required to be licensed by the Commonwealth;

308 "Motor vehicle liability policy" means an owner's or a driver's policy of liability insurance certified,
309 as provided in this chapter, by an insurance carrier licensed to do business in the Commonwealth or by
310 an insurance carrier not licensed to do business in the Commonwealth on compliance with the
311 provisions of this chapter, as proof of financial responsibility.

312 § 46.2-601. Appointment of Commissioner agent for service of process.

313 Each nonresident owner of a motor vehicle, trailer, or semitrailer applying for the registration thereof
314 in the Commonwealth shall file with the application a duly executed instrument, constituting the
315 Commissioner and his successors in office his attorney on whom all lawful process against and notice to
316 the owner may be served in any action or legal proceeding brought as the result of the operation or use
317 of any motor vehicle, trailer, or semitrailer registered by or for him, in the Commonwealth; and therein
318 shall agree that any process against or notice to the owner shall have the same effect as if served on the
319 owner within the Commonwealth. The service of the process or notice shall be made by leaving a copy
320 of it in the office of the Commissioner with a service fee of ~~three dollars~~ *in the amount prescribed in*
321 *§ 2.2-409* to be taxed as a part of the costs of the suit. The Commissioner shall forthwith notify the
322 owner of the service by letter.

323 § 58.1-3959. Petition to ascertain delinquent taxes; exoneration from lien.

324 Any person interested in real estate may file a petition in the circuit court of the county or city
325 wherein the assessment of taxes was made, for the purpose of having ascertained any and all delinquent
326 taxes due upon such real estate or any delinquent taxes imposed under the authority of §§ 58.1-3712,
327 58.1-3713, or § 58.1-3713.4. A copy of the petition shall be served upon the county or city attorney, or
328 if there is none, on the attorney for the Commonwealth at least ~~ten~~ 10 days before the date upon which
329 the petition specifies the court shall be asked to hear the petition. The court may refer the question to a
330 commissioner in chancery for report thereon. The court shall enter final judgment determining what, if
331 any, taxes are due upon the real estate, including any taxes covered by the lien described in
332 § 58.1-3713.5, mentioned in the petition. Upon the payment of any amount so ascertained by the court,
333 and the costs of the proceeding, the land shall be held free and clear of any such tax lien. No writ tax
334 shall be charged. The clerk shall be entitled to a fee of ~~one dollar~~ \$10 which, together with other costs,
335 including such fee as the court may deem proper to allow the commissioner in chancery, shall be paid
336 by the petitioner.