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HOUSE BILL NO. 310

Offered January 13, 2010

Prefiled January 11, 2010

A *BILL to amend the Code of Virginia by adding a section numbered 8.01-424.2, relating to offers of judgment; costs.*

Patron—O'Bannon

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 a section numbered 8.01-424.2 as follows:

§ 8.01-424.2. *Offers of judgment; costs.*

A. Not less than 10 days prior to the commencement of trial, a party defending against a claim may serve upon an adverse party an offer to allow judgment to be taken against him of specified terms, which shall include the costs then accrued. If, within 10 days after being served, the adverse party serves written notice accepting the offer, either party may file with the court the offer and notice of appearance, together with proof of service, whereupon the court shall enter judgment.

B. An unaccepted offer shall be deemed to have been withdrawn and evidence of an unaccepted offer shall not be admissible, except to determine an award of costs pursuant to subsection D. The fact that an offer was not accepted shall not preclude the making of subsequent offers.

C. When a party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment, which shall have the same effect as an offer made pursuant to subsection A if it is served not less than 10 days prior to a hearing to determine the extent of liability.

D. If the judgment obtained by the adverse party is not more favorable to him than the terms of the offer made pursuant to subsection A or C, the adverse party shall pay all costs incurred by either party from the time of the offer.

E. For purposes of this section, "costs" include expert witness fees; court reporter appearance fees; fees for transcripts; fees and travel expenses for attorneys, fact witnesses, and expert witnesses; fees for service of process; filing fees; and cancellation fees charged by expert witnesses.