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## SENATE BILL NO. 94

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee  
on March 13, 2012)

(Patron Prior to Substitute—Senator Edwards)

*A BILL to amend and reenact § 8.01-3 of the Code of Virginia and to repeal § 30-153 of the Code of Virginia, relating to the Rules of Evidence.*

**Be it enacted by the General Assembly of Virginia:****1. That § 8.01-3 of the Code of Virginia is amended and reenacted as follows:**

§ 8.01-3. Supreme Court may prescribe rules; effective date and availability; indexed, and annotated; effect of subsequent enactments of General Assembly.

~~A. Supreme Court to prescribe rules.~~ - The Supreme Court, subject to §§ 17.1-503 and 16.1-69.32, may, from time to time, prescribe the forms of writs and make general regulations for the practice in all courts of the Commonwealth; and may prepare a system of rules of practice and a system of pleading and the forms of process and may prepare rules of evidence to be used in all such courts. This section shall be liberally construed so as to eliminate unnecessary delays and expenses.

~~B. Effective date; availability.~~ - New rules and amendments to rules shall not become effective until 60 days from adoption by the Supreme Court, and shall be made available to all courts, members of the bar, and the public.

~~C. Rules to be published.~~ - The Virginia Code Commission shall publish and cause to be properly indexed and annotated the rules adopted by the Supreme Court, and all amendments thereof by the Court, and all changes made therein pursuant to subsection D hereof.

~~D. Effect of subsequent enactments of the General Assembly on rules of court.~~ - The General Assembly may, from time to time, by the enactment of a general law, modify, or annul any rules adopted or amended pursuant to this section. In the case of any variance between a rule and an enactment of the General Assembly such variance shall be construed so as to give effect to such enactment.

~~E. The rules of evidence prepared by the Supreme Court shall be submitted to the Virginia Code Commission for approval as provided in § 30-153 and shall be codified upon enactment by the General Assembly. Any amendment or addition to the rules of evidence shall be adopted by the Supreme Court on or before December 15 of any year and shall become effective on July 1 of the following year unless the General Assembly modifies or annuls any such amendment or addition by enactment of a general law. Notwithstanding the foregoing, the Supreme Court, at any time, may amend the rules to conform with any enactment of the General Assembly and correct unmistakable printer's errors, misspellings, unmistakable errors to statutory cross-references, and other unmistakable errors in the rules of evidence.~~

~~F. When any rule contained in the rules of evidence is derived from one or more sections of the Code of Virginia, the Supreme Court shall include a citation to such section or sections in the title of the rule.~~

**2. That § 30-153 of the Code of Virginia is repealed.**

**3. That the Supreme Court of Virginia has prepared and adopted Rules of Evidence in accordance with its rulemaking authority under § 8.01-3 of the Code of Virginia.**

**4. That the Rules of Evidence prepared and adopted by the Supreme Court of Virginia have been submitted to and approved by the Virginia Code Commission as required by subsection E of § 8.01-3 of the Code of Virginia and by § 30-153 of the Code of Virginia.**

**5. That, notwithstanding the provisions of subsection E of § 8.01-3 of the Code of Virginia and § 30-153 of the Code of Virginia, Rule 2:102 of the Rules of Evidence shall contain the following language, approved by the Supreme Court of Virginia, as its third sentence: "Common law case authority, whether decided before or after the effective date of the Rules of Evidence, may be argued to the courts and considered in interpreting and applying the Rules of Evidence."**

**6. That pursuant to the authority set forth in §§ 30-146 and 30-147 of the Code of Virginia, the Virginia Code Commission shall direct any party with whom the Virginia Code Commission contracts to publish the Code of Virginia to include in the catchline of every section of the Code of Virginia from which any rule contained in the Rules of Evidence has been derived a notation specifying such rule.**

**7. That the provisions of this act shall become effective on July 1, 2012, and that the Rules of Evidence shall become effective on July 1, 2012.**

**8. That the Rules of Evidence shall be applicable in all proceedings held on or after the effective date of this act in any civil action or criminal case pending on that date or commenced thereafter.**

**9. That in the event of any conflict between any enactment of the General Assembly and any rule**

**60 contained in the Rules of Evidence, the enactment of the General Assembly shall control.**