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HOUSE BILL NO. 437

Offered January 13, 2016

Prefiled January 7, 2016

A *BILL to amend and reenact §§ 8.01-676.1 and 8.01-682 of the Code of Virginia, relating to security for appeal.*

Patron—Loupassi

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-676.1 and 8.01-682 of the Code of Virginia are 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 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 a suspending 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. —

1. *The trial court or commission may, upon the motion of any party (i) for good cause shown, modify the terms of the security for the appeal or of the security for the suspension of execution of a judgment and (ii) resolve any objection to the form or issuer of a bond or letter of credit at any time until the Court of Appeals or the Supreme Court acts upon any similar motion. Any party aggrieved by the decision of the trial court or commission may request a review of such decision by the appellate court before which the case is pending.*

2. 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 or of the security for the suspension of execution of a judgment be modified for good cause shown *(i) upon the motion of any party or (ii) 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.*

3. 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 trial court*, the Court of Appeals, or the Supreme Court.

4. 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 B*, 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 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~~

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59 suspension of execution of a judgment to be discontinued, in the case of the security required under
60 subsection C.

61 F. By whom executed. — Each bond filed shall be executed by a party or another on his behalf, and
62 by surety approved by the clerk of the court from which appeal is sought, or by the clerk of the
63 Supreme Court or the clerk of the Court of Appeals if the bond is ordered by such Court. Any letter of
64 credit posted as security for an appeal shall be in a form acceptable to the clerk of the court from which
65 appeal is sought, or by the clerk of the Supreme Court or the Court of Appeals if the security is ordered
66 by such court. The letter of credit shall be from a bank incorporated or authorized to conduct banking
67 business under the laws of this Commonwealth or authorized to do business in this Commonwealth
68 under the banking laws of the United States, or a federally insured savings institution located in this
69 Commonwealth.

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

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

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

93 J. In any civil litigation under any legal theory, the amount of the *appeal suspending* bond or
94 irrevocable letter of credit to be furnished during the pendency of all appeals or discretionary reviews of
95 any judgment granting legal, equitable, or any other form of relief in order to stay the execution thereon
96 during the entire course of appellate review by any courts shall be set in accordance with applicable
97 laws or court rules, ~~except that~~ *and the amount of the suspending bond or irrevocable letter of credit*
98 *shall include an amount equivalent to one year's interest calculated from the date of the notice of*
99 *appeal in accordance with § 8.01-682. However, the total appeal suspending bond or irrevocable letter*
100 *of credit that is required of an appellant and all of its affiliates shall not exceed \$25 million, regardless*
101 *of the value of the judgment.*

102 ~~JJ. Any objection to or motion for modification of the form, amount, or issuer of any letter of credit~~
103 ~~or bond may be made to, and decided by, the Court of Appeals or the Supreme Court. Any objection to~~
104 ~~or motion for modification of the form, amount, or issuer of any letter of credit or bond may also be~~
105 ~~made to, and decided by, the court or commission whose decision is being appealed at any time until~~
106 ~~the Court of Appeals or the Supreme Court acts upon any similar motion.~~

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

118 L. For good cause shown, a court may otherwise waive the filing of an *appeal a suspending* bond or
119 irrevocable letter of credit as to the damages in excess of, or other than, the compensatory damages.
120 *Subject to the provisions of subsection K, the parties may agree to waive the requirement of a*

121 *suspending bond or irrevocable letter of credit or agree to a suspending bond or irrevocable letter of*
 122 *credit in an amount less than the compensatory damages.*

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

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

127 O. Virginia Workers' Compensation Commission. — No claimant who files an appeal from a final
 128 decision of the Virginia Workers' Compensation Commission with the Court of Appeals shall be
 129 required to post security for costs as provided in subsection A or B if such claimant has not returned to
 130 his employment or by reason of his disability is unemployed. Such claimant shall file an affidavit
 131 describing his disability and employment status with the Court of Appeals together with a motion to
 132 waive the filing of the security under subsection A or B.

133 P. Time for filing security for appeal. — The appeal bond or letter of credit prescribed in subsections
 134 A and B is not jurisdictional and the time for filing such security in cases before the Court of Appeals
 135 or the Supreme Court may be extended by a judge or justice of the court before which the case is
 136 pending on motion for good cause shown and to attain the ends of justice. *The effect of failing to*
 137 *perfect an appeal bond shall be governed by the Rules of Supreme Court of Virginia.*

138 Q. Consideration of appeal bond, *suspending bond*, or letter of credit by Court of Appeals or
 139 Supreme Court. — A determination on an issue affecting an appeal bond, *suspending bond*, or letter of
 140 credit in a case before the Court of Appeals or the Supreme Court may be considered by an individual
 141 judge of such court rather than by a panel of judges.

142 R. This section applies to injunction bonds required pursuant to § 8.01-631.

143 S. *In accordance with § 1-205, if the party required to post an appeal or suspending bond tenders*
 144 *such bond together with cash in the full amount required by this section to the clerk specified in this*
 145 *section, no surety shall be required.*

146 **§ 8.01-682. What damages awarded appellee.**

147 When any judgment is affirmed, damages shall be awarded to the appellee. When the judgment is for
 148 the payment of money, the damages shall be the interest to which the party is legally entitled, *as*
 149 *provided in § 6.2-302 or any other provision of law*, from the date of filing the notice of appeal until
 150 the date the appellate court issues its mandate. Such interest shall be computed upon the whole amount
 151 of the recovery, including interest and costs, and such damages shall be in satisfaction of all interest
 152 during such period of time. When the judgment is not for the payment of any money, except costs, the
 153 damages shall be such specific sum as the appellate court may deem reasonable, not being more than
 154 \$2,500 nor less than \$150.