

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 9

An Act to amend the Code of Virginia by adding a section numbered 8.01-420.4:1, relating to deposition of corporate officer.

[H 2167]

Approved February 13, 2019

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 8.01-420.4:1 as follows:

§ 8.01-420.4:1. *Taking of depositions; corporate officers.*

A. For the purposes of this section, "officer" means the president, chief executive officer, chief operating officer, or chief financial officer of a publicly traded company or of a subsidiary of such company that employs 250 or more people.

B. In any action in which an officer's publicly traded company is a party, if a party issues a witness subpoena for the deposition of an officer prior to taking the deposition of a corporate representative pursuant to Supreme Court Rule 4:5(b)(6), and the officer, or company on the officer's behalf, files a motion for a protective order asserting that the discovery sought is obtainable from some other source that is more convenient, less burdensome, or less expensive, in order to defeat such motion for a protective order, the burden is on the party seeking the deposition to show that (i) the officer's deposition is reasonably calculated to lead to the discovery of admissible evidence, (ii) the officer may have personal knowledge of discoverable information that cannot reasonably be discovered through other means, and (iii) a deposition of a representative other than the officer or other methods of discovery are unsatisfactory, insufficient, or inadequate.

C. A motion for a protective order filed pursuant to subsection B shall include one or more proposed corporate employees available to be deposed instead of the officer, along with a description of the employee's role in the corporation, his knowledge relevant to the subject matter of the litigation, and the source of such knowledge, provided that the party opposing the motion has stated with reasonable particularity the matters on which the officer's examination is requested.

D. If a protective order is issued and the party seeking the deposition subsequently learns that the requirements set forth in subsection B can be met, then the party seeking the deposition may file for modification or lifting of the protective order.

2. That the provisions of § 8.01-420.4:1 of the Code of Virginia, as created by this act, apply to a subpoena issued pursuant to the Uniform Interstate Depositions and Discovery Act (§ 8.01-412.8 et seq. of the Code of Virginia) consistent with the provisions of subsection E of § 8.01-412.10 of the Code of Virginia.