

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

4 [H 2167]

5 Approved

6 Be it enacted by the General Assembly of Virginia:

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

8 § 8.01-420.4:1. *Taking of depositions; corporate officers.*

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

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

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

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

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

ENROLLED

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