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SENATE BILL NO. 143

Senate Amendments in [] - January 26, 2022

Prefiled January 8, 2022

A BILL to amend and reenact §§ 8.01-626, 8.01-671, 8.01-675.3, 8.01-675.6, 8.01-676.1, 17.1-403, 17.1-405, 17.1-408, 19.2-321.1, and 19.2-321.2 of the Code of Virginia, relating to the Court of Appeals of Virginia [~~÷ emergency~~] .

Patron Prior to Engrossment—Senator Edwards

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-626, 8.01-671, 8.01-675.3, 8.01-675.6, 8.01-676.1, 17.1-403, 17.1-405, 17.1-408, 19.2-321.1, and 19.2-321.2 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-626. Review of injunction; petitions for review.

~~Wherein~~ When a circuit court (i) grants ~~an~~ a preliminary or permanent injunction ~~or~~, (ii) refuses such an injunction ~~or~~, (iii) having granted such an injunction, dissolves or refuses to enlarge it, or (iv) enters an order reviewable pursuant to [subsection B of] § 8.01-675.5, an aggrieved party may file a petition for review with the clerk of the Court of Appeals within 15 days of the circuit court's order. The clerk shall assign the petition to a three-judge panel of the Court of Appeals. The aggrieved party shall serve a copy of the petition for review on the counsel for the opposing party, which may file a response within seven days from the date of service unless the court determines a shorter time frame. The petition for review shall be accompanied by a copy of the proceedings, including the original papers and the court's order respecting the injunction. The court may take such action thereon as it considers appropriate under the circumstances of the case.

When the Court of Appeals has initially acted upon a petition for review of an order of a circuit court respecting an injunction, a party aggrieved by such action of the Court of Appeals may, within 15 days of the order of the Court of Appeals, present a petition for review of such order to the clerk of the Supreme Court. The clerk shall assign the petition to a three-justice panel of the Supreme Court. The aggrieved party shall serve a copy of the petition for review on the counsel for the opposing party, which may file a response within seven days from the date of service unless the court determines a shorter time frame. The petition for review shall be accompanied by a copy of the proceedings before the circuit court, including the original papers and the circuit court's order respecting the injunction, and a copy of the order of the Court of Appeals from which review is sought. The Supreme Court may take such action thereon as it considers appropriate under the circumstances of the case.

Nothing in this section shall be construed to prevent the Court of Appeals or the Supreme Court from resolving a petition for review by an order joined by more than ~~one judge~~ three judges or justice justices. An order issued by a justice of the Supreme Court does not become a judgment of the court except on the concurrence of at least three justices, as provided in § 17.1-308.

§ 8.01-671. Time within which petition must be presented.

A. In cases where an appeal is permitted from the trial court to the Supreme Court, no petition shall be presented for an appeal to the Supreme Court from any final judgment, whether the Commonwealth be a party or not, that was rendered more than 90 days before the petition is presented, provided that an extension may be granted, in the discretion of the Supreme Court, in order to attain the ends of justice on motion for good cause shown.

B. No appeal to the Supreme Court from a decision of the Court of Appeals shall be granted unless a petition for appeal is filed within 30 days after the date of the decision appealed from. However, an extension may be granted, in the discretion of the court, in order to attain the ends of justice on motion for good cause shown.

§ 8.01-675.3. Time within which appeal must be taken; notice.

Except as provided in § 19.2-400 for pretrial appeals by the Commonwealth in criminal cases and in § 19.2-401 for cross appeals by the defendant in such pretrial appeals, a notice of appeal to the Court of Appeals in any case within the jurisdiction of the court shall be filed within 30 days from the date of any final judgment order, decree, or conviction. When an appeal from an interlocutory decree or order is permitted, the notice of appeal shall be filed within 30 days from the date of such decree or order, except for pretrial appeals pursuant to § 19.2-398. However, an extension may be granted, in the discretion of the Court of Appeals, in order to attain the ends of justice on motion for good cause shown.

For purposes of this section, § 17.1-408, and an appeal pursuant to § 19.2-398, a petition for appeal

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59 in a criminal case or a notice of appeal to the Court of Appeals, shall be deemed to be timely filed if (i)
60 it is mailed postage prepaid by registered or certified mail and (ii) the official postal receipt, showing
61 mailing within the prescribed time limits, is exhibited upon demand of the clerk or any party.

62 **§ 8.01-675.6. Jurisdictional amount.**

63 No ~~petition~~ *appeal* shall be ~~presented for an appeal taken~~ from any judgment of a circuit court
64 except ~~in cases in which~~ *when* the controversy is for a matter of \$500 or more in value or amount, and
65 except in cases in which it is otherwise expressly provided; nor to a judgment of any circuit court *in a*
66 *civil case* when the controversy is for a matter less in value or amount than \$500, exclusive of costs,
67 unless there be drawn in question a freehold or franchise or the title or bounds of land, or some other
68 matter not merely pecuniary.

69 **§ 8.01-676.1. Security for appeal.**

70 A. Security for costs of appeal of right to Court of Appeals in civil cases. — A party filing a notice
71 of an appeal of right to the Court of Appeals in a civil case shall simultaneously file an appeal bond or
72 irrevocable letter of credit in the penalty of \$500, or such sum as the trial court may require, subject to
73 subsection E, conditioned upon paying all costs and fees incurred in the Court of Appeals and the
74 Supreme Court if it takes cognizance of the claim. If the appellant wishes suspension of execution in a
75 civil appeal, the security shall also be conditioned and shall be in such sum as the trial court may
76 require as provided in subsection C.

77 *Al. Security for costs or suspension in criminal cases. — An appeal bond or letter of credit is not*
78 *required in criminal appeals as security for costs. [Pursuant to § 19.2-322.1, a] [A] suspension bond*
79 *is not required in criminal appeals.*

80 B. Security for costs on petition for appeal to Court of Appeals or Supreme Court. — An appellant
81 whose petition for appeal is granted by the Court of Appeals or the Supreme Court shall (if he has not
82 done so) within 15 days from the date of the Certificate of Appeal file an appeal bond or irrevocable
83 letter of credit in the same penalty as provided in subsection A, conditioned on the payment of all
84 damages, costs, and fees incurred in the Court of Appeals and in the Supreme Court.

85 C. Security for suspension of execution. — An appellant who wishes execution of the judgment or
86 award from which an appeal is sought to be suspended during the appeal shall, subject to the provisions
87 of subsection J, file a suspending bond or irrevocable letter of credit conditioned upon the performance
88 or satisfaction of the judgment and payment of all damages incurred in consequence of such suspension,
89 and except as provided in subsection D, execution shall be suspended upon the filing of such security
90 and the timely prosecution of such appeal. Such security shall be continuing and additional security shall
91 not be necessary except as to any additional amount that may be added or to any additional requirement
92 that may be imposed by the courts.

93 D. Suspension of execution in decrees for support and custody; injunctions. — The court from which
94 an appeal is sought may refuse to suspend the execution of decrees for support and custody, and may
95 also refuse suspension when a judgment refuses, grants, modifies, or dissolves an injunction.

96 E. Increase or decrease in penalty or other modification of security.

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

103 2. The Court of Appeals or the Supreme Court may order that the penalty or any other terms or
104 requirements of the security for the appeal or of the security for the suspension of execution of a
105 judgment be modified for good cause shown (i) upon the motion of any party or (ii) if such request is
106 made in the brief of any party filed in the Court of Appeals, or in the Petition for Appeal or the
107 appellee's Brief in Opposition filed in the Supreme Court or the Court of Appeals.

108 3. Affidavits and counter-affidavits may be filed by the parties containing facts pertinent to such
109 request. Any increase or decrease in the amount of or other modification of the security so ordered shall
110 be effected in the clerk's office of the trial court within 15 days of the order of the trial court, the Court
111 of Appeals, or the Supreme Court.

112 4. If an increase so ordered is not effected within 15 days, the appeal shall be dismissed, in the case
113 of the security required under subsection A or B, or the suspension of execution of a judgment shall be
114 discontinued, in the case of the security required under subsection C.

115 F. By whom executed. — Each bond filed shall be executed by a party or another on his behalf, and
116 by surety approved by the clerk of the court from which appeal is sought, or by the clerk of the
117 Supreme Court or the clerk of the Court of Appeals if the bond is ordered by such Court. Any letter of
118 credit posted as security for an appeal shall be in a form acceptable to the clerk of the court from which
119 appeal is sought, or by the clerk of the Supreme Court or the Court of Appeals if the security is ordered
120 by such court. The letter of credit shall be from a bank incorporated or authorized to conduct banking

business under the laws of this Commonwealth or authorized to do business in this Commonwealth under the banking laws of the United States, or a federally insured savings institution located in this Commonwealth.

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

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

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

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

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

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

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

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

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

P. Time for filing security for appeal. — The appeal bond or letter of credit prescribed in subsections A and B is not jurisdictional and the time for filing such security in cases before the Court of Appeals

or the Supreme Court may be extended by a judge or justice of the court before which the case is pending on motion for good cause shown ~~and to attain the ends of justice~~. The effect of failing to perfect an appeal bond shall be governed by the Rules of Supreme Court of Virginia.

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

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

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

§ 17.1-403. Rules of practice, procedure, and internal processes; promulgation by Supreme Court; amendments; summary disposition of appeals.

The Supreme Court shall prescribe and publish the initial rules governing practice, procedure, and internal processes for the Court of Appeals designed to achieve the just, speedy, and inexpensive disposition of all litigation in that court consistent with the ends of justice and to maintain uniformity in the law of the Commonwealth. Before amending the rules thereafter, the Supreme Court shall receive and consider recommendations from the Court of Appeals. The rules shall prescribe procedures (i) authorizing the Court of Appeals to prescribe truncated record or appendix preparation and (ii) permitting the Court of Appeals to dispense with oral argument *if the parties agree that oral argument is not necessary* or if the panel has examined the briefs and record and unanimously agrees that oral argument is unnecessary because (a) the appeal is wholly without merit or (b) the dispositive issue or issues have been authoritatively decided, and the appellant has not argued that the case law should be overturned, extended, modified, or reversed.

§ 17.1-405. Appellate jurisdiction — Administrative agency, Virginia Workers' Compensation Commission, and civil matter appeals.

Unless otherwise provided by law, any aggrieved party may appeal to the Court of Appeals from:

1. Any final decision of a circuit court on appeal from (i) a decision of an administrative agency, or (ii) a grievance hearing decision issued pursuant to § 2.2-3005;
2. Any final decision of the Virginia Workers' Compensation Commission;
3. Except as provided in subsection B of § 17.1-406, any final judgment, order, or decree of a circuit court in a civil matter;
4. Any interlocutory decree or order pursuant to § 8.01-267.8, 8.01-626, or 8.01-675.5; ~~or~~
5. *Any interlocutory decree or order involving an equitable claim in which the decree or order (i) requires money to be paid or the possession or title of property to be changed or (ii) adjudicates the principles of a cause; or*
6. Any final judgment, order, or decree of a circuit court (i) involving an application for a concealed weapons permit pursuant to Article 6.1 (§ 18.2-307.1 et seq.) of Chapter 7 of Title 18.2, (ii) involving involuntary treatment of prisoners pursuant to § 53.1-40.1 or 53.1-133.04, or (iii) for declaratory or injunctive relief under § 57-2.02.

§ 17.1-408. Time for filing; notice; opening brief; petition.

The notice of appeal to the Court of Appeals shall be filed in every case within the court's appellate jurisdiction as provided in § 8.01-675.3. The opening brief in a criminal case shall be filed not more than 40 days after the filing of the record with the Court of Appeals. However, an extension may be granted in the discretion of the Court of Appeals ~~in order to attain the ends of justice on motion for good cause shown~~. In an appeal pursuant to subsection B or C of § 19.2-398, the petition for appeal shall be presented within the 40-day time limitation provided in this section.

Upon receiving a notice of appeal in a criminal case or, if notice of the appeal is received by the clerk prior to the entry of final judgment, upon entry of final judgment, the clerk of the circuit court shall cause a transcript to be prepared of the trial and any other circuit court proceedings, as requested by the appellant in the notice of appeal or by order of the circuit court, at the expense of the Commonwealth.

§ 19.2-321.1. Motion in the Court of Appeals for delayed appeal in criminal cases.

A. Filing and content of motion. When, due to the error, neglect, or fault of counsel representing the appellant, or of the court reporter, or of the circuit court or an officer or employee thereof, an appeal, in whole or in part, in a criminal case has (i) never been initiated; (ii) been dismissed for failure to adhere to proper form, procedures, or time limits in the perfection of the appeal; ~~or~~, (iii) *been dismissed in part because at least one assignment of error did not adhere to proper form of procedures, or* (iv) *[been denied or] the conviction has been affirmed* ~~the conviction~~, for failure to file or timely file the indispensable transcript or written statement of facts as required by law or by the Rules of Supreme Court; then a motion for leave to pursue a delayed appeal may be filed in the Court of Appeals within six months after the appeal has been dismissed ~~[or denied]~~, the conviction has been affirmed, or the

circuit court judgment sought to be appealed has become final, whichever is later. Such motion shall identify the circuit court and the style, date, and circuit court record number of the judgment sought to be appealed, and, if one was assigned in a prior attempt to appeal the judgment, shall give the Court of Appeals record number in that proceeding, and shall set forth the specific facts establishing the said error, neglect, or fault. If the error, neglect, or fault is alleged to be that of an attorney representing the appellant, the motion shall be accompanied by the affidavit of the attorney whose error, neglect, or fault is alleged, verifying the specific facts alleged in the motion, and certifying that the appellant is not personally responsible, in whole or in part, for the error, neglect, or fault causing loss of the original opportunity for appeal.

B. Service, response, and disposition. Such motion shall be served on the attorney for the Commonwealth and the Attorney General, in accordance with the Rules of Supreme Court. If the Commonwealth disputes the facts alleged in the motion, or contends that those facts do not entitle the appellant to a delayed appeal under this section, the motion shall be denied without prejudice to the appellant's right to seek a delayed appeal by means of petition for a writ of habeas corpus. Otherwise, the Court of Appeals shall, if the motion meets the requirements of this section, grant appellant leave to initiate or re-initiate pursuit of the appeal.

C. Time limits when motion granted. If the motion is granted, all computations of time under the Rules of Supreme Court shall run from the date of the order of the Court of Appeals granting the motion, or if the appellant has been determined to be indigent, from the date of the order by the circuit court appointing counsel to represent the appellant in the delayed appeal, whichever is later.

D. Applicability. The provisions of this section shall not apply to cases in which the appellant is responsible, in whole or in part, for the error, neglect, or fault causing loss of the original opportunity for appeal, nor shall it apply in cases where the claim of error, neglect, or fault has already been alleged and rejected in a prior judicial proceeding.

§ 19.2-321.2. Motion in the Supreme Court for delayed appeal in criminal cases.

A. Filing and content of motion. When, due to the error, neglect, or fault of counsel representing the appellant, or of the court reporter, or of the Court of Appeals or the circuit court or an officer or employee of either, an appeal from the Court of Appeals to the Supreme Court in a criminal case has (i) never been initiated; (ii) been dismissed for failure to adhere to proper form, procedures, or time limits in the perfection of the appeal; (iii) been dismissed in part because at least one assignment of error contained in the petition for appeal did not adhere to proper form or procedures; or (iv) been denied or the conviction has been affirmed; for failure to file or timely file the indispensable transcript or written statement of facts as required by law or by the Rules of Supreme Court; then a motion for leave to pursue a delayed appeal may be filed in the Supreme Court within six months after the appeal has been dismissed or denied, the conviction has been affirmed, or the Court of Appeals judgment sought to be appealed has become final, whichever is later. Such motion shall identify by the style, date, and Court of Appeals record number of the judgment sought to be appealed, and, if one was assigned in a prior attempt to appeal the judgment to the Supreme Court, shall give the record number assigned in the Supreme Court in that proceeding, and shall set forth the specific facts establishing the said error, neglect, or fault. If the error, neglect, or fault is alleged to be that of an attorney representing the appellant, the motion shall be accompanied by the affidavit of the attorney whose error, neglect, or fault is alleged, verifying the specific facts alleged in the motion, and certifying that the appellant is not personally responsible, in whole or in part, for the error, neglect, or fault causing loss of the original opportunity for appeal.

B. Service, response, and disposition. Such motion shall be served on the attorney for the Commonwealth and the Attorney General, in accordance with Rule 5:4 of the Supreme Court. If the Commonwealth disputes the facts alleged in the motion, or contends that those facts do not entitle the appellant to a delayed appeal under this section, the motion shall be denied without prejudice to the appellant's right to seek a delayed appeal by means of petition for a writ of habeas corpus. Otherwise, the Supreme Court shall, if the motion meets the requirements of this section, grant appellant leave to initiate or re-initiate pursuit of the appeal from the Court of Appeals to the Supreme Court.

C. Time limits when motion granted. If the motion is granted, all computations of time under the Rules of Supreme Court shall run from the date of the order of the Supreme Court granting the motion, or if the appellant has been determined to be indigent, from the date of the order by the circuit court appointing counsel to represent the appellant in the delayed appeal, whichever is later.

D. Applicability. The provisions of this section shall not apply to cases in which the appellant is responsible, in whole or in part, for the error, neglect, or fault causing loss of the original opportunity for appeal, nor shall it apply in cases where the claim of error, neglect, or fault has already been alleged and rejected in a prior judicial proceeding.

[2. That an emergency exists and the provisions of this act amending § 17.1-405 of the Code of Virginia are in force from its passage.]