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SENATE BILL NO. 999

Offered January 8, 2025

Prefiled January 7, 2025

A BILL to amend and reenact §§ 8.01-676.1, 17.1-403, and 19.2-326 of the Code of Virginia, relating to appeals; security for appeal and fees; procedure on appeal.

Patron—Surovell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-676.1, 17.1-403, and 19.2-326 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 in civil cases. — A party filing a notice of an appeal of right to the Court of Appeals in a civil case 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 in a civil appeal, the security shall also be conditioned and shall be in such sum as the trial court may require as provided in subsection C.

A1. Security for costs or suspension in criminal cases. — An appeal bond or letter of credit is not required in criminal appeals as security for costs. A suspension bond is not required in criminal appeals.

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 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 that may be added or to any additional requirement that 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 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.

F. By whom executed. — Each bond filed shall be executed by a party or another on his behalf, and by surety approved by the clerk of the court from which appeal is sought, or by the clerk of the Supreme Court or the clerk of the Court of Appeals if the bond is ordered by such Court. Any letter of credit posted as

59 security for an appeal shall be in a form acceptable to the clerk of the court from which appeal is sought, or  
60 by the clerk of the Supreme Court or the Court of Appeals if the security is ordered by such court. The letter  
61 of credit shall be from a bank incorporated or authorized to conduct banking business under the laws of this  
62 Commonwealth or authorized to do business in this Commonwealth under the banking laws of the United  
63 States, or a federally insured savings institution located in this Commonwealth.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

131 **§ 17.1-403. Rules of practice, procedure, and internal processes; promulgation by Supreme Court;  
132 amendments; summary disposition of appeals.**

133 The Supreme Court shall prescribe and publish the initial rules governing practice, procedure, and internal  
134 processes for the Court of Appeals designed to achieve the just, speedy, and inexpensive disposition of all  
135 litigation in that court consistent with the ends of justice and to maintain uniformity in the law of the  
136 Commonwealth. Before amending the rules thereafter, the Supreme Court shall receive and consider  
137 recommendations from the Court of Appeals. The rules shall prescribe procedures (i) authorizing the Court of  
138 Appeals to prescribe truncated record or appendix preparation and (ii) permitting the Court of Appeals to  
139 dispense with oral argument if the parties agree that oral argument is not necessary or if the panel has  
140 examined the briefs and record and unanimously agrees that oral argument is unnecessary because (a) the  
141 appeal is wholly without merit ~~or~~; (b) the dispositive issue or issues have been authoritatively decided, and  
142 the appellant has not argued that the case law should be overturned, extended, modified, or reversed; *or (c)*  
143 *the facts and legal arguments are adequately presented in the briefs and record, and the decisional process*  
144 *would not be significantly aided by oral argument.*

145 **§ 19.2-326. Payment of expenses of appeals of indigent defendants.**

146 In any felony or misdemeanor case wherein the judge of the circuit court, from the affidavit of the  
147 defendant or any other evidence certifies that the defendant is financially unable to pay his ~~attorneys'~~ *attorney*  
148 fees, costs, and expenses incident to an appeal, the court to which an appeal is taken shall order the payment  
149 of such ~~attorneys'~~ *attorney* fees in an amount not less than \$300, costs, or necessary expenses of such  
150 ~~attorneys'~~ *attorney* in an amount deemed reasonable by the court, by the Commonwealth out of the  
151 appropriation for criminal charges. If the conviction is upheld on appeal, the ~~attorney's~~ *attorney* fees, costs,  
152 and necessary expenses of such attorney paid by the Commonwealth under the provisions ~~hereof shall~~ *of this*  
153 *section may* be assessed against the defendant.

154 **2. That the provisions of § 17.1-403 of the Code of Virginia, as amended by this act, shall expire on**  
155 **June 30, 2027, unless reenacted by the 2027 Session of the General Assembly.**