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SENATE BILL NO. 1010

Offered January 8, 2025

Prefiled January 7, 2025

A BILL to amend and reenact § 16.1-89 of the Code of Virginia and to amend the Code of Virginia by adding in Article 9 of Chapter 14 of Title 8.01 a section numbered 8.01-420.9, relating to subpoenas duces tecum; financial records of nonparty.

Patron—Surovell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-89 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 9 of Chapter 14 of Title 8.01 a section numbered 8.01-420.9 as follows:

§ 8.01-420.9. Subpoena duces tecum; financial records of nonparty.

A. Any party requesting a subpoena duces tecum or on behalf of whom an attorney-issued subpoena duces tecum is issued for financial records shall have the duty to determine whether the individual account holder of such financial records is a nonparty. In instances where financial records being subpoenaed are those of a nonparty account holder, the party requesting or issuing the subpoena shall deliver to such nonparty account holder (i) a copy of the request for subpoena or a copy of the attorney-issued subpoena and (ii) notice informing such nonparty account holder of his right to file a motion to quash or modify the subpoena if he believes such financial records should not be disclosed and objects to such disclosure. In the event that such nonparty account holder whose financial records are being sought files a motion to quash or modify such subpoena, the court shall proceed with such motion in accordance with the provisions of § 16.1-89.

B. Upon receiving a valid subpoena duces tecum for financial records, no commercial business providing credit history or credit reports, issuer as defined in § 6.2-424, financial institution as defined in § 6.2-604, or money transmitter as defined in § 6.2-1900 shall condition compliance with such subpoena upon the payment of any fees for the costs of producing such records. Any entity that violates the provisions of this subsection shall be liable to the party requesting the subpoena or on behalf of whom the subpoena was issued for reasonable attorney fees and costs.

§ 16.1-89. Subpoena duces tecum; attorney-issued subpoena duces tecum.

A judge or clerk of a district court may issue a subpoena duces tecum pursuant to the terms of Rule 4:9A of the Rules of the Supreme Court of Virginia except that such subpoena may be directed to a party to the case as well as to a person who is not a party.

Subpoenas duces tecum for medical records issued by an attorney shall be subject to the provisions of §§ 8.01-413 and 32.1-127.1:03 except that no separate fee for issuance shall be imposed.

A subpoena duces tecum may also be issued by an attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. Any such subpoena duces tecum shall be on a form approved by the Committee on District Courts, signed by the attorney as if a pleading and shall include the attorney's address. A copy, together with the attorney's certificate of service pursuant to Rule 1:12, shall be mailed or delivered to the clerk's office of the court in which the case is pending on the day of issuance by the attorney. The law governing subpoenas duces tecum issued by a clerk shall apply mutatis mutandis, except that attorneys may not issue subpoenas duces tecum in those cases in which they may not issue a summons as provided in § 8.01-407. A sheriff shall not be required to serve an attorney-issued subpoena that is not issued at least five business days prior to the date production of evidence is desired. When an attorney-at-law transmits one or more subpoenas duces tecum to a sheriff to be served in his jurisdiction, the provisions in § 8.01-407 regarding such transmittals shall apply.

If the time for compliance with a subpoena duces tecum issued by an attorney is less than 14 days after service of the subpoena, the person to whom it is directed or the nonparty account holder whose financial records are being sought pursuant to § 8.01-420.9 may serve upon the party issuing the subpoena a written objection setting forth any grounds upon which such production, inspection, or testing should not be had. If objection is made, the party on whose behalf the subpoena was issued and served shall not be entitled to the requested production, inspection, or testing, except pursuant to an order of the court, but may, upon notice to the person to whom the subpoena was directed, move for an order to compel production, inspection, or testing. Upon such timely motion, the court may quash, modify, or sustain the subpoena.

2. That the Supreme Court of Virginia shall revise the relevant provisions of Rules 4:1 and 4:9A of the Rules of Supreme Court of Virginia to be consistent with the provisions of this act.

3. That the Boyd-Graves Conference shall conduct a study on whether the Code of Virginia should be further amended to allow a nonparty to file a motion to quash or modify a subpoena duces tecum for

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59 other types of records that may be sought by a party in a civil proceeding. The Boyd-Graves  
60 Conference shall report any findings of such study to the Chairmen of the Senate and House  
61 Committees for Courts of Justice by October 1, 2025.