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SENATE BILL NO. 859

Offered January 13, 2027

A BILL to amend and reenact § 8.01-384 of the Code of Virginia, relating to preservation of issues for appellate review; contemporaneous objection; exceptions.

Patron—Carroll Foy

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-384 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-384. Formal exceptions to rulings or orders of court unnecessary; motion for new trial unnecessary in certain cases; exceptions to requirement of contemporaneous objection.

A. ~~Formal exceptions~~ *No formal exception* to ~~rulings or orders~~ *a ruling, action, or order* of the court shall be ~~unnecessary~~ *required*; but ~~for all purposes for which~~ *where* an exception has ~~heretofore~~ *previously* been ~~necessary~~ *required*, it shall be sufficient that a party, at the time ~~the~~ *such* ruling, *action,* or order ~~of the court~~ is made or sought, makes known to the court the action ~~which~~ *that* he desires the court to take or his ~~objections~~ *objection* to the action of the court and his grounds ~~therefor; and, if~~ *for such objection. If* a party has no opportunity to object to a ruling, *action,* or order at the time it is made, the absence of ~~an~~ *such* objection shall not ~~thereafter~~ prejudice him on motion for a new trial or, *upon a showing that an exception under subsection C or D is applicable,* on appeal. No party, after having made an objection or motion known to the court, shall be required to (i) make such objection or motion again in order to preserve his right to appeal, challenge, or move for reconsideration of, a ruling, order, or action of the court or (ii) move for reconsideration in order to preserve his right to appeal a ruling, order, or action of the court, even if such ruling, order, or action is without prejudice to a motion to reconsider. No party shall be deemed to have agreed to, or acquiesced in, any written order of a trial court so as to forfeit his right to contest such order on appeal except by express written agreement in his endorsement of the order. Arguments made at trial via written pleading, memorandum, recital of objections in a final order, oral argument reduced to transcript, or agreed written statements of facts shall, unless expressly withdrawn or waived, be deemed preserved ~~therein~~ for assertion on appeal.

B. The failure to make a motion for a new trial in any case in which an appeal, writ of error, or supersedeas lies to or from a higher court shall not be deemed a waiver of any objection made during the trial if such objection be properly made a part of the record.

C. When considering the absence of a stated objection to a ruling, action, or order of the trial court in an appeal to the Court of Appeals or the Supreme Court of Virginia, a showing that, at the time such ruling, action, or order was made, (i) a party had no opportunity to state the objection or (ii) the grounds for the objection were not available, shall constitute good cause for the absence of an objection.

D. When considering the absence of a stated objection to a ruling, action, or order at the time it was made pursuant to subsection A, the ends of justice shall be deemed to be attained in an appeal to the Court of Appeals or the Supreme Court of Virginia if the record affirmatively shows that (i) a miscarriage of justice has occurred or (ii) the ruling, action, or order (a) violated a mandatory requirement or prohibition imposed by statute or by a Rule of the Supreme Court of Virginia and (b) such violation is material to the judgment, order, sentence, or award on appeal. For purposes of clause (ii), a requirement or prohibition imposed by statute or Rule of the Supreme Court of Virginia is mandatory when it directs or prohibits an action in a manner that gives the court, commission, or other tribunal no discretion, including a limit on the extent or duration of an otherwise discretionary action. Any relief granted based on a finding under clause (ii) shall be limited to correcting such violation and shall not change, modify, or otherwise impact any portion of the judgment, order, or award not otherwise affected by such violation.

E. The provisions of clause (ii) of subsection D shall not apply to (i) how the court, commission, or other tribunal exercised its discretion when taking such action, provided that such discretion was within any limit imposed by statute or Rule of the Supreme Court of Virginia; (ii) any claim that the evidence failed to prove an element of the offense; or (iii) any claim that evidence was erroneously admitted or excluded. In addition, the provisions of clause (ii) of subsection D shall not apply where the record shows that the party sought or agreed to the ruling, action, or order or that the party expressly waived the requirement or prohibition. Nothing in this subsection or in subsection C or D shall be construed to abrogate or otherwise affect the application of § 8.01-678.

F. Any party intending to raise an exception under subsection C or D in an appeal shall state such exception in his opening brief and shall identify where the underlying factual basis for such exception appears in the record.

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G. The provisions of this section shall apply to any civil or criminal case and to any appeal from a commission or other tribunal.

2. That the provisions of this act shall only apply to an appeal where the notice of appeal was filed on or after July 1, 2027.

3. That the Office of the Executive Secretary of the Supreme Court of Virginia shall amend Rules 5A:18 and 5:25 of the Rules of the Supreme Court of Virginia to be consistent with the provisions of this act.