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SENATE BILL NO. 818

Senate Amendments in [] — February 4, 2003

A BILL to amend and reenact § 17.1-213 of the Code of Virginia, relating to destruction of will files.

Patron Prior to Engrossment—Senator Norment

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 17.1-213 of the Code of Virginia is amended and reenacted as follows:**

§ 17.1-213. Disposition of papers in ended cases.

A. All case files for cases ended prior to January 1, 1913, shall be permanently maintained in hardcopy form, either in the locality served by the circuit court where such files originated or in The Library of Virginia in accordance with the provisions of §§ 42.1-83 and 42.1-86.

B. The following records for cases ending on or after January 1, 1913, may be destroyed in their entirety at the discretion of the clerk of each circuit court after having been retained for ~~ten~~ 10 years after conclusion:

1. Conditional sales contracts;
2. Concealed weapons permit applications;
3. Minister appointments;
4. Petitions for appointment of trustee;
5. Name changes;
6. Nolle prosequi cases;

7. Law and chancery matters that are voluntarily dismissed, including nonsuits, cases that are dismissed as settled and agreed, cases that are dismissed with or without prejudice, cases that are discontinued or dismissed under § 8.01-335 and district court appeals dismissed under § 16.1-113 prior to 1988;

8. Misdemeanor and traffic cases, including those which were commenced on a felony charge but concluded as a misdemeanor;

9. Suits to enforce a lien;

10. Garnishments;

11. Executions except for those covered in § 8.01-484;

12. Miscellaneous oaths and qualifications, but only if the order or oath or qualification is spread in the appropriate order book; and

13. Civil cases pertaining to declarations of habitual offender status and full restoration of driving privileges.

C. All other records or cases ending on or after January 1, 1913, may be destroyed in their entirety at the discretion of the clerk of each circuit court subject to the following guidelines:

1. All civil and chancery case files to which subsection D does not pertain may be destroyed after ~~twenty~~ 20 years from the court order date.

2. All criminal cases dismissed, including those not a true bill, acquittals and not guilty verdicts, may be destroyed after ~~ten~~ 10 years from the court order date.

3. All criminal case files involving a felony conviction may be destroyed (i) after ~~twenty~~ 20 years from the sentencing date or (ii) when the sentence term ends, whichever comes later.

D. Under the provisions of subsections B and C, the entire file of any case deemed by the local clerk of court to have historical value, as defined in § 42.1-77, or genealogical or sensational significance shall be retained permanently as shall all cases in which the title to real estate is established, conveyed or condemned by an order or decree of the court. The final order for all cases in which the title to real estate is so affected shall include an appropriate notification thereof to the clerk.

E. Except as provided in subsection A, the clerk of a circuit court may cause (i) any or all ended records, papers, or documents pertaining to law, chancery, and criminal cases which have been ended for a period of ~~three~~ 3 years or longer, (ii) any unexecuted search warrants and affidavits for unexecuted search warrants, provided at least ~~three~~ 3 years have passed since issued, (iii) any abstracts of judgments, [~~and~~] (iv) original wills *and will files* [*provided at least 5 years have passed since the will has been probated or recorded*] , [*and (v) originals of instruments which have been recorded and have remained unretrieved by the recording party for more than six months,*] to be destroyed if such records, papers, documents, or wills no longer have administrative, fiscal, historical, or legal value to warrant continued retention, provided such records, papers, or documents have been microfilmed. Such microfilm and microphotographic process and equipment shall meet state archival microfilm standards pursuant to

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59 § 42.1-82 and such microfilm shall be placed in conveniently accessible files and provisions made for
60 examining and using same. The clerk shall further provide security negative copies of such microfilmed
61 materials for storage in The Library of Virginia.