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SENATE BILL NO. 619

Offered January 21, 2004

A *BILL to amend and reenact §§ 8.01-293, 8.01-499, 15.2-1609.3, and 17.1-272 of the Code of Virginia, relating to sheriffs' fees.*

Patron—Blevins

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-293, 8.01-499, 15.2-1609.3, and 17.1-272 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-293. Authorization to serve process, capias or criminal show cause order; execute writ of possession and levy upon property.

A. The following persons are authorized to serve process:

1. The sheriff within such territorial bounds as described in § 8.01-295; or

2. Any person of age ~~eighteen~~ 18 years or older and who is not a party or otherwise interested in the subject matter in controversy.

Whenever in this Code the term "officer" or "sheriff" is used to refer to persons authorized to make, return or do any other act relating to service of process, such term shall be deemed to refer to any person authorized by this section to serve process.

B. Notwithstanding any other provision of law (i) only a sheriff or high constable may execute an order or writ of possession for personal, real or mixed property, including an order or writ of possession arising out of an action in unlawful entry and detainer or ejectment; (ii) any sheriff, high constable or law-enforcement officer as defined in § 9.1-101 of the Code of Virginia may serve any capias or criminal show cause order; and (iii) only a sheriff, the high constable for the City of Norfolk or Virginia Beach or a treasurer may levy upon property.

§ 8.01-499. Officer receiving money to make return thereof and pay net proceeds; commission, etc.

An officer receiving money under this chapter shall make return thereof forthwith to the court or the clerk's office of the court in which the judgment is entered. For failing to do so, the officer shall be liable as if he had acted under an order of such court. After deducting from such money a commission of ~~five per centum~~ 10 percent and his necessary expenses and costs, including reasonable fees to sheriff's counsel, he shall pay the net proceeds, and he and his sureties and their representatives shall be liable therefor, in like manner as if the same had been made under a writ of fieri facias on the judgment.

§ 15.2-1609.3. Fees and mileage allowances.

A. Every sheriff, and every sheriff's deputy, shall collect all fees and mileage allowances provided by law for the services of such officer, other than those he is entitled to receive from the Commonwealth or from the county or city for which he is elected or appointed and fees and mileage allowances provided for services in connection with the prosecution of any criminal matter in the circuit courts. However, no fee shall be charged for serving any public orders, for summoning or impaneling grand juries, or for services in elections except as provided under Title 24.2.

B. All fees and mileage allowances accruing in connection with any civil or criminal matter shall be collected by the clerk of the court in which the case is heard and paid by him into the treasury of the county or city in which the case is heard. All fees collected by or for every sheriff and deputy shall be paid into the treasury of the county or city for which he is elected or appointed, on or before the tenth day of the month next succeeding that in which the ~~same fees~~ are collected. The treasurer of each county and city shall credit such amounts in excess of such fees received in fiscal year 1994 to the account of the Commonwealth to be remitted to the State Treasurer along with other funds due to the Commonwealth.

C. In any case in which a sheriff makes a levy and advertises property for sale and by reason of a settlement between the parties to the claim or suit he is not permitted to sell under the levy, the sheriff is not entitled to any commissions, but in addition to his fees for making the levy and return, he shall be entitled to recover from the party for whom the services were performed the expenses incurred for advertisement of the proposed sale of the property.

D. When, after distraining or levying on tangible property the officer neither sells nor receives payment and either takes no forthcoming bond or takes one which is not forfeited, he shall, if not in default, have in addition to the ~~sixty cents~~ \$1 for a bond, if one was taken, a fee of ~~twelve dollars~~ \$12. If the fee is more than one-half of what his commission would have amounted to if he had received

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59 payment, he shall, whether a bond was taken or not, receive a fee of at least ~~one dollar~~ \$1 and so much
60 more as is necessary to equal the one-half.

61 § 17.1-272. Process and service fees generally.

62 A. ~~The~~ *Except as otherwise provided, the fee for process and service in the following instances shall*
63 *be twelve dollars as follows:*

64 1. Service on any person, firm or corporation, a declaration in ejectment, order, notice, summons or
65 any other civil process, except as herein otherwise provided, and for service on any person, firm, or
66 corporation any process when the body is not taken and making a return thereof, *the fee shall be \$12,*
67 *except that no fee shall be charged for service pursuant to § 2.2-4022.*

68 2. Summoning a witness or garnishee on an attachment, *the fee shall be \$12.*

69 3. Service on any person of an attachment or other process under which the body is taken and
70 making a return thereon, *the fee shall be \$12.*

71 4. Service of any order of court not otherwise provided for, *the fee shall be \$12,* except that no fees
72 shall be charged for protective orders issued pursuant to Chapter 11 (§ 16.1-226 et seq.) of Title 16.1.

73 5. Service upon a party of a writ of possession, *the fee shall be \$12; and, in addition, for executing*
74 *the writ, the fee shall be \$50.*

75 6. Levying an execution or distress warrant or an attachment, *the fee shall be \$50. Service upon a*
76 *party of an execution or distress warrant or an attachment shall be \$12; and, in addition, for actual*
77 *seizure of property, the fee shall be \$50.*

78 7. Making a return of a writ of fieri facias where no levy is made or forthcoming bond is taken, *the*
79 *fee shall be \$12.*

80 8. Levying upon current money, bank notes, goods or chattels of a judgment debtor pursuant to
81 § 8.01-478, *the fee shall be \$12.*

82 9. *For advertising by sheriff or high constable for sale of levied property, the fee shall be \$36 in*
83 *addition to any costs incurred for advertising.*

84 B. The process and service fee for serving any papers returnable out of state shall be ~~fifty dollars~~ \$75,
85 except no fees shall be charged for the service of papers in connection with the prosecution of any
86 misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration,
87 or service of a protection order or a petition for protection order, to protect a victim of domestic
88 violence, stalking or sexual assault. A victim of domestic violence, stalking or sexual assault shall not
89 bear the costs associated with the filing of criminal charges against the offender, or the costs associated
90 with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection
91 order, or witness subpoena, issued inside or outside the Commonwealth.

92 C. The fees set out in this section shall be allowable for services provided by such officers in the
93 circuit and district courts.