

041275702

SENATE BILL NO. 619

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 4, 2004)

(Patron Prior to Substitute—Senator Blevins)

*A BILL to amend and reenact §§ 8.01-293 and 15.2-1609.3 of the Code of Virginia, relating to sheriffs' fees.***Be it enacted by the General Assembly of Virginia:****1. That §§ 8.01-293 and 15.2-1609.3 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.

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