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SENATE BILL NO. 1330

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws
on February 2, 2005)

(Patron Prior to Substitute—Senator Quayle)

A BILL to amend the Code of Virginia by adding in Title 54.1 a chapter numbered 45 consisting of sections numbered 54.1-4500 through 54.1-4517, relating to the Virginia Board of Court Reporting; penalty.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 54.1 a chapter numbered 45, consisting of sections numbered 54.1-4500 through 54.1-4517, as follows:

CHAPTER 45.

VIRGINIA BOARD OF COURT REPORTING.

§ 54.1-4500. Definitions.

As used in this chapter unless the context requires a different meaning:

"Board" means the Virginia Board of Court Reporting.

"Certified Court Reporter" or "CCR," means designation of certification given by the Virginia Court Reporters Association for its certified members.

"Court reporter" means any person who is engaged in the practice of court reporting as a profession as defined in this chapter. The term "court reporter" shall include not only those who actually report judicial proceedings in courts but also those who make verbatim records.

"Court reporting" means the making of a verbatim recording by means of (i) manual shorthand, (ii) machine shorthand, (iii) stenomask, or (iv) voice writer reporting of any testimony given under oath before, or for submission to any court examiner, board, commission, or other body created by statute, or by the Constitution of Virginia or in any other proceeding where a verbatim record is required.

"NCRA" means the National Court Reporters Association.

"NVRA" means the National Verbatim Reporters Association.

"Secretary" means a person selected by the Board to serve as secretary of administration and finance.

"VCRA" means the Virginia Court Reporters Association.

§ 54.1-4501. Practice of court reporting.

No person engaged in the making of a verbatim record by means of manual shorthand, machine shorthand, stenomask, or voice writer reporting of any testimony given under oath shall hold himself out as a certified court reporter unless he has been licensed pursuant to the provisions of this chapter.

§ 54.1-4502. Virginia Board of Court Reporting created; members; terms; officers; meetings; expenses.

A. There is created the Virginia Board of Court Reporting. The Board shall consist of seven members appointed by the Governor as follows:

1. Four members certified as court reporters at a professional level by NCRA or NVRA. A list of nominations for each of these positions shall be submitted to the Governor by VCRA.

2. Two members of the Virginia State Bar in good standing. A list of nominations for each of these positions shall be submitted to the Governor by the Virginia State Bar.

3. One member of the Virginia Judicial Council. A nomination for this position shall be submitted to the Governor by the Chief Justice of the Supreme Court.

B. All members of the board shall be citizens of the United States and citizens of the Commonwealth of Virginia.

C. A list of three nominees for each position shall be submitted to the Governor by the designated organizations by October 1, 2005. The initial terms shall begin January 1, 2006.

D. The initial members of the board shall serve the following terms as designated by the Governor: (i) three of the initial members shall serve for two years; (ii) two of the initial members shall serve for three years; and (iii) two of the initial members shall serve for four years

E. Subsequent terms of office shall be four years. No board member may serve more than two consecutive terms. In the event of a vacancy in a certified court reporters position on the Board, the Governor shall fill the vacancy from a list of nominees provided by the VCRA for that position. Each board member shall serve until his successor is duly appointed and qualified.

F. At its first meeting each year, the Board will elect a chair, a vice-chair, and a secretary. No member shall be elected to serve more than two consecutive years in the same office.

G. After the initial appointments to the Board are made, the Board shall meet by January 31 of the following year for the purpose of organizing and transacting business as may properly come before it.

60 Subsequently, the Board shall meet no less than twice annually, and as frequently as it deems necessary,
61 at such time and places as it designates. A quorum necessary to transact business shall consist of four
62 of the members of the Board.

63 H. Board members shall receive travel expenses and per diems pursuant to §§ 2.2-2813 and
64 2.2-2825. The compensation and expenses shall be paid out of the funds of the Board. Reimbursement
65 shall be made if available funds are sufficient for this purpose.

66 § 54.1-4503. Powers and duties of the Board.

67 A. The Board shall have the power and duty to:

68 1. Act on matters concerning licensure and the process of granting, suspending, reinstating, and
69 revoking a license, including but not limited to, requiring licensees to maintain adequate levels of
70 insurance to cover acts and omissions relative to the provisions of court reporting services.

71 2. Set a fee schedule for granting licenses and renewals of licenses. The fees shall be sufficient to
72 cover the cost of the continued operation and administration of the Board.

73 3. Develop a mechanism for processing applications for license and renewals.

74 4. Establish a procedure to enable the investigation of complaints concerning the violation of ethical
75 practices for licensees.

76 5. Maintain a current register consisting of the names, addresses, and license numbers of licensed
77 reporters. These registers shall be matters of public record.

78 6. Maintain a complete record of all Board proceedings.

79 7. Submit an annual report detailing the proceedings of the Board to the Governor by September 1.

80 8. Adopt continuing education requirements no later than October 1 of the year in which the initial
81 Board is appointed. These requirements for renewal of a license shall be implemented by January 1 of
82 the year following.

83 B. The Board is charged with the duty and vested with the power and authority to determine the
84 content of examinations to be given to applicants for licensure as certified court reporters and to issue
85 numbered licenses to those found qualified as certified court reporters who are in compliance with this
86 chapter.

87 § 54.1-4504. Charges of fraud, deceit, etc., against licensee; hearing; appeal; reapplication.

88 A. Any person may bring charges of fraud, deceit, negligence, incompetence, or misconduct against a
89 licensee. All charges shall be made in writing or by videotape and sworn to by the person making the
90 charges. All charges shall be submitted to the chair of the Board within two years of the alleged
91 occurrence. After a review of the charges, the Board shall conduct a hearing at which it may dismiss
92 the charges, impose a fine not to exceed \$1000, and suspend or revoke the license of the person
93 charged. Nothing in this section shall be construed to limit any cause of action that may exist in
94 connection with the fraud, deceit negligence, incompetence, or misconduct of a licensee.

95 B. The licensee may appeal a decision of the Board imposing an administrative fine or revoking or
96 suspending a license by submitting a request to the Board for reconsideration within 90 days following
97 the decision of the Board. If no resolution is achieved, further appeals shall be submitted to the circuit
98 court in the jurisdiction of the residence of the licensee. Any licensee whose application for renewal of
99 licensure was denied or whose license was revoked may reapply after 12 months. The Board may then
100 reissue a license or rescind any disciplinary action if a majority of the members, which shall be no less
101 than four members, vote in favor of the action.

102 C. Any party to a proceeding being transcribed by a licensee shall be deemed in privity of contract
103 with the licensee for the court reporting services provided, whereby an aggrieved party shall be entitled
104 to maintain a cause of action for damages suffered as a result of the fraud, deceit, negligence,
105 incompetence, or misconduct of such licensee.

106 § 54.1-4505. Rules and regulations.

107 The Board shall promulgate regulations in accordance with the Administrative Process Act
108 (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading
109 practices by practitioners, and to effectively administer the regulatory system Implemented by the Board.
110 The rules and regulations shall be made available to all licensees.

111 § 54.1-4506. Violations; penalties.

112 After January 1, 2006, any person who undertakes or attempts to undertake the practice of court
113 reporting for remuneration among consumers without first having procured a valid license, or who
114 knowingly presents or files false information with the Board for the purpose of obtaining a license, or
115 who violates this chapter shall be guilty of a Class 3 misdemeanor. A person who is not licensed may
116 not bring or maintain an action to enforce any contract for court reporting services that was entered
117 into in violation of this chapter. Whenever it appears to the Board that any court reporter has violated
118 or is about to violate this chapter, the Board may, in its own name, petition the circuit court of the
119 county or city wherein the violation occurred or is about to occur to issue a temporary restraining
120 order enjoining the violation.

121 § 54.1-4507. Actions by Board to recover damages; liability of Board members.

A. The Board may sue and be sued in its own name to recover actual or compensatory damages, including interest and court costs, sustained within the Commonwealth of Virginia as the result of conduct of any licensee who violates this chapter or the rules and regulations of the Board.

B. All members of the Board shall be immune from civil liability while acting within the scope of their duties as Board members.

§ 54.1-4508. Educational requirements, examinations; applications for licensure; fees.

To be licensed as a court reporter, an applicant must have passed the NCRA Registered Professional Reporter (RPR) Examination or the NVRA Certified Verbatim Reporter (CVR) Examination. Applications for such licenses, signed and sworn by the applicants, shall be made on forms furnished by the Board. All applicants who are found qualified to engage in the practice of court reporting under the provisions of this chapter will be issued a license as a certified court reporter and an identifying number. The license shall be valid until December 31 of the year of its issuance.

§ 54.1-4509. Reciprocity agreements authorized.

A. The Board may enter into a reciprocal agreement with any state, agency, or other organization that licenses, certifies, or registers professional court reporters, if the Board finds that the state, agency, or organization has substantially the same requirements or more stringent requirements.

B. The Board shall set by regulation the fees appropriate in processing reciprocity.

§ 54.1-4510. Annual license fee; fund.

A. Notwithstanding any other provision of law, the annual license fee may be increased or decreased by the Board, provided the Board shall not set an annual fee at an amount that would not provide sufficient revenues to pay all the costs and expenses incurred by the Board in enforcing this chapter. The annual fee shall cover a license for the 12-month period beginning January 1 of each year.

B. There is created in the State Treasury the Virginia Board of Court Reporting Fund (the Fund). All fees collected by the Board shall be paid into the state treasury to the credit of the Fund. Moneys in the Fund shall be subject to withdrawal only upon warrant of the State Comptroller to be issued upon certification of the secretary or treasurer of the board.

C. Any funds remaining in the State Treasury to the credit of the Board at the end of each year in excess of \$250,000 shall be available to provide for the education and training of court reporters. At all times the Board may retain a sum not in excess of \$250,000 to meet any emergency that may affect the efficient operation of the Board. No funds shall be withdrawn or expended except as budgeted and allocated pursuant to sections within this chapter and only in amounts as stipulated in the general appropriations bill or other appropriations bills.

§ 54.1-4511. Renewal; change of address.

Each person licensed hereunder shall apply by dates determined by the Board for renewal of his license and pay a fee determined by the Board and thereupon the Board shall issue a numbered license showing that the holder is entitled to practice for the period covered by said payment. The Board shall require specific continuing education as a condition for license renewal. The Board may provide for the late renewal of a license that has lapsed and may require the payment of a late fee or an examination prior to issuing said renewed license. Certified court reporters shall notify the Board in writing of any change of address within 30 days.

§ 54.1-4512. Licensure without examination.

A. An applicant who has been engaged in the practice of court reporting for a minimum of one year prior to the effective date of this chapter and who provides to the Board an affidavit setting forth his past education and work experience as a court reporter and the affidavits of three attorneys unrelated to him who are licensed to practice law in the Commonwealth and who have utilized the services of the applicant, which attest to the applicant's proficiency in court reporting, shall, upon payment of a fee determined by the Board, be licensed to practice as a court reporter.

B. Any current member in good standing with the VCRA and currently certified under the voluntary CCR Program, upon payment of a fee determined by the Board, shall be automatically granted a certified court reporter license by the Board and thereby licensed to practice as a court reporter in the Commonwealth of Virginia.

C. VCRA members who hold the voluntary CCR certification and do not apply for certification under the Virginia Board of Court Reporting within one year of the enactment of this bill will be required to take the RPR or CVR examination in order to become a certified court reporter.

§ 54.1-4513. Reciprocity for applicants licensed, certified or registered outside the Commonwealth.

The Board may license as a court reporter any applicant who furnishes the Board with a valid Registered Professional Reporter (RPR) certificate, Certified Verbatim Reporter (CVR) certificate, Certificate of Merit (CM) certificate, or Registered Merit Reporter (RMR) certificate, or similar certificate issued by the National Court Reporters Association, the National Verbatim Reporters Association or their successors.

§ 54.1-4514. Inactive status.

183 *The Board shall establish an inactive status for persons who are not actively engaged in the practice*
184 *of court reporting. The holder of an inactive license issued pursuant to this section shall not engage in*
185 *any activity for which a license is required. An inactive license issued pursuant to this section shall be*
186 *renewed during the same time period in which an active license is renewed. The holder of an inactive*
187 *license is exempt from any continuing education requirement for renewal of an active license. The*
188 *renewal fee for a license or certification in an active status shall apply also for a renewal or a license*
189 *or certification in an inactive status, unless a lesser renewal fee is specified by the Board. In order for*
190 *the holder of an inactive license issued pursuant to this section to restore his or her license to an active*
191 *status, the holder of an inactive license shall: (i) pay the required renewal fee, and (ii) complete*
192 *continuing education equivalent, if required by the Board for renewal of an active license, unless a*
193 *different requirement is specified by the Board.*

194 § 54.1-4515. Temporary licensure.

195 *An applicant who has engaged in the practice of court reporting in the Commonwealth of Virginia*
196 *for less than one year on the effective date of this chapter and provides to the Board satisfactory proof*
197 *of graduation from an accredited high school or its equivalent and the affidavits of three attorneys,*
198 *unrelated to him who are licensed to practice law in the jurisdiction and who have utilized the services*
199 *of the applicant, which attest to the applicant's proficiency in court reporting, shall, upon application to*
200 *the Board on forms approved by the Board and payment of a fee determined by the Board, be issued a*
201 *temporary license to practice as a court reporter. Such temporary licenses or certification shall expire*
202 *on the sixtieth day following the date upon which the next Board-approved examination for licensure or*
203 *certification is given. No more than two additional temporary licenses shall be issued to any applicant*
204 *who fails to pass the scheduled examination for licensure or certification.*

205 § 54.1-4516. Records of Board; rules and regulations; reports.

206 *The Board shall maintain records of its proceedings and a registry of all persons licensed by it,*
207 *which shall be public records and open to inspection. The Board shall make such rules and regulations*
208 *as may be necessary for the proper conduct of its duties.*

209 § 54.1-4517. Fees.

210 *All funds collected under the provisions of this chapter shall be deposited into a special fund, hereby*
211 *created in the state treasury. All expenses incurred by the Board in implementing the provisions of this*
212 *chapter shall be paid out of such special fund provided that the expenses of the Board shall not be in*
213 *excess of the receipts from registration and other sources that have been received from the Board. The*
214 *Board shall be entitled to charge and collect, as determined by the Secretary, the following fees: (i) an*
215 *applicant fee for any temporary or regular license, (ii) a renewal fee for any regular or temporary*
216 *license, (iii) a reinstatement fee for any application for reinstatement of a temporary license or for a*
217 *regular license which has been revoked or suspended, (iv) a past due fee to be paid for the renewal of a*
218 *license after the due date that shall be increased 20 percent for each month or fraction of a month that*
219 *payment of renewal is delayed. However, delinquency of more than six months shall result in revocation*
220 *of certification.*