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SENATE BILL NO. 383

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact §§ 2.2-3808.2 and 17.1-279 of the Code of Virginia, relating to posting and availability of certain information on the Internet; prohibitions.

Patrons—McDougle and Hanger

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3808.2 and 17.1-279 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3808.2. Posting and availability of certain information on the Internet; prohibitions.

A. Beginning January 1, 2004, no court clerk shall post on a court-controlled website any document that contains the following information: (i) an actual signature; (ii) a social security number; (iii) a date of birth identified with a particular person; (iv) the maiden name of a person's parent so as to be identified with a particular person; (v) any financial account number or numbers; or (vi) the name and age of any minor child.

B. Each such clerk shall post notice that includes a list of the documents routinely posted on its website.

C. Nothing in this section shall be construed to prohibit access to any original document as provided by law.

D. This section shall not apply to the following:

1. Providing secure remote access to any document among the land records by means of a network or system that complies with security standards developed by the Virginia Information Technologies Agency in consultation with the circuit court clerks, the Executive Secretary of the Supreme Court, the Compensation Board, interested citizens, and users of land and other court records. Such standards shall include, but not be limited to, a requirement, as a precondition for access, for registration by users in person or by means of a notarized or otherwise sworn application that establishes the prospective user's identity, business or residence address, and citizenship status, *except that no court clerk shall post on such network or system any document that contains the following information: (i) an actual signature, (ii) a social security number, (iii) a date of birth identified with a particular person, (iv) the maiden name of a person's parent so as to be identified with a particular person, (v) any financial account number or numbers, or (vi) the name and age of any minor child*;

2. Postings related to legitimate law-enforcement purposes;

3. Postings of historical, genealogical, interpretive, or educational documents and information about historic persons and events;

4. Postings of instruments and records filed or recorded prior to 1905; and

5. Providing secure remote access to any person and his counsel to documents filed in matters to which such person is a party.

E. As used in this section, "land records" means any writing authorized by law to be recorded on paper or in electronic format which the clerk records affecting title to real property.

F. Nothing in this section shall prohibit the Supreme Court or any other court from providing online access to a case management system which may include abstracts of case filings and proceedings in the courts of the Commonwealth.

G. The clerk of the circuit court of any jurisdiction shall be immune from suit arising from any acts or omissions relating to providing remote access on the Internet pursuant to this section unless the clerk was grossly negligent or engaged in willful misconduct.

This subsection shall not be construed to limit, withdraw or overturn any defense or immunity already existing in statutory or common law, or to affect any cause of action accruing prior to the effective date of this subsection.

~~H. This section shall expire on July 1, 2007.~~

§ 17.1-279. Additional fee to be assessed by circuit court clerks for information technology.

A. In addition to the fees otherwise authorized by this chapter, the clerk of each circuit court shall assess a $5 fee, known as the "Technology Trust Fund Fee," in each civil action, upon each instrument to be recorded in the deed books, and upon each judgment to be docketed in the judgment lien docket book. Such fee shall be deposited by the State Treasurer into a trust fund. The State Treasurer shall maintain a record of such deposits.

B. Four dollars of every $5 fee shall be allocated by the Compensation Board from the trust fund for

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the purposes of: (i) developing and updating individual land records automation plans for individual circuit court clerks' offices; (ii) implementing automation plans to modernize land records in individual circuit court clerks' offices and provide secure remote access to land records throughout the Commonwealth; (iii) obtaining and updating office automation and information technology equipment including software and conversion services; (iv) preserving, maintaining and enhancing court records, including, but not limited to, the costs of repairs, maintenance, service contracts and system upgrades; and (v) improving public access to court records. The Compensation Board in consultation with circuit court clerks and other users of court records shall develop and update policies governing the allocation of funds for these purposes. However, such funds shall not be used for personnel costs within the circuit court clerks' offices. The Compensation Board policies governing the allocation of funds shall require that a clerk submit to the Compensation Board a written certification that the clerk's proposed technology improvements of his land records will accommodate secure remote access to those land records on a statewide basis.

The annual budget submitted by each circuit court clerk pursuant to § 15.2-1636.7 may include a request for technology improvements in the upcoming fiscal year to be allocated by the Compensation Board from the trust fund. Such request shall not exceed the deposits into the trust fund credited to that locality. The Compensation Board shall allocate the funds requested by the clerks in an amount not to exceed the deposits into the trust fund credited to their respective localities.

C. The remaining $1 of each such fee may be allocated by the Compensation Board from the trust fund (i) for the purposes of funding studies to develop and update individual land-records automation plans for individual circuit court clerks' offices, at the request of and in consultation with the individual circuit court clerk's offices, and (ii) for the purposes enumerated in subsection B to implement the plan to modernize land records in individual circuit court clerks' offices and provide secure remote access to land records throughout the Commonwealth. The allocations pursuant to this subsection may give priority to those individual clerks' offices whose deposits into the trust fund would not be sufficient to implement its modernization plan. The Compensation Board policies governing the allocation of funds shall require that a clerk submit to the Compensation Board a written certification that the clerk's proposed technology improvements of his land records will accommodate secure remote access to those land records on a statewide basis.

D. Secure remote access to land records shall be by paid subscription service through individual circuit court clerk's offices pursuant to § 17.1-276, or through designated application service providers. Compliance with security standards developed by the Virginia Information Technologies Agency pursuant to § 2.2-3808.2 shall be certified by the individual circuit court clerks' offices to the Virginia Information Technologies Agency and the Compensation Board. The individual circuit court clerk's office or its designated application service provider shall certify compliance with such security standards. Nothing in this section shall prohibit the Compensation Board from allocating trust fund money to individual circuit court clerks' offices for the purpose of complying with such security standards.

E. Such fee shall not be assessed to any instrument to be recorded in the deed books nor any judgment to be docketed in the judgment lien docket books tendered by any federal, state or local government.

F. If a circuit court clerk has implemented an automation plan for his land records that will accommodate secure remote access on a statewide basis, then that clerk may apply to the Compensation Board for an allocation from the Technology Trust Fund for automation and technology improvements in the civil divisions, or the criminal division, of his office. Such request shall not exceed the deposits into the trust fund credited to that locality. The Compensation Board in approval of such application shall consider what local funds have been spent by the jurisdiction to accelerate the implementation of the technology plan approved by the Virginia Information Technologies Agency in each circuit court clerk's office.

G. Information regarding the technology programs adopted by the circuit court clerks shall be shared with the Virginia Information Technologies Agency, The Library of Virginia, and the Office of the Executive Secretary of the Supreme Court.

H. Nothing in this section shall be construed to diminish the duty of local governing bodies to furnish supplies and equipment to the clerks of the circuit courts pursuant to § 15.2-1656. Revenue raised as a result of this section shall in no way supplant current funding to circuit court clerks' offices by local governing bodies.

~~I. It is the intent of the General Assembly that all circuit court clerks provide secure remote access to land records on or before July 1, 2006.~~

J. Effective July 1, 2006, except for transfers pursuant to this section, there shall be no transfers out of the fund, including transfers to the general fund.