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HOUSE BILL NO. 102

Offered January 13, 2010

Prefiled January 5, 2010

A BILL to amend and reenact §§ 16.1-69.48:1, 17.1-275.2, 17.1-275.7, 18.2-104, and 19.2-303.4 of the Code of Virginia, relating to deferred disposition for a first offense of petit larceny.

Patron—Loupassi

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.48:1, 17.1-275.2, 17.1-275.7, 18.2-104, and 19.2-303.4 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-69.48:1. Fixed fee for misdemeanors, traffic infractions and other violations in district court; additional fees to be added.

A. Assessment of the fees provided for in this section shall be based on: (i) an appearance for court hearing in which there has been a finding of guilty; (ii) a written appearance with waiver of court hearing and entry of guilty plea; (iii) for a defendant failing to appear, a trial in his or her absence resulting in a finding of guilty; (iv) an appearance for court hearing in which the court requires that the defendant successfully complete traffic school or a driver improvement clinic, in lieu of a finding of guilty; (v) a deferral of proceedings pursuant to §§ 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, 18.2-104, 18.2-251 or 19.2-303.2; or (vi) proof of compliance with law under §§ 46.2-104 and 46.2-1157.

In addition to any other fee prescribed by this section, a fee of \$20 shall be taxed as costs whenever a defendant fails to appear, unless, after a hearing requested by such person, good cause is shown for such failure to appear. No defendant with multiple charges arising from a single incident shall be taxed the applicable fixed fee provided in subsection B, C, or D of this section more than once for a single appearance or trial in absence related to that incident. However, when a defendant who has multiple charges arising from the same incident and who has been assessed a fixed fee for one of those charges is later convicted of another charge that arises from that same incident and that has a higher fixed fee, he shall be assessed the difference between the fixed fee earlier assessed and the higher fixed fee.

A defendant with charges which arise from separate incidents shall be taxed a fee for each incident even if the charges from the multiple incidents are disposed of in a single appearance or trial in absence.

In addition to the fixed fees assessed pursuant to this section, in the appropriate cases, the clerk shall also assess any costs otherwise specifically provided by statute.

B. In misdemeanors tried in district court, except for those proceedings provided for in subsection C, there shall be assessed as court costs a fixed fee of \$61. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Processing fee (General Fund) (.573770);
2. Virginia Crime Victim-Witness Fund (.049180);
3. Regional Criminal Justice Training Academies Fund (.016393);
4. Courthouse Construction/Maintenance Fund (.032787);
5. Criminal Injuries Compensation Fund (.098361);
6. Intensified Drug Enforcement Jurisdiction Fund (.065574);
7. Sentencing/supervision fee (General Fund) (.131148); and
8. Virginia Sexual and Domestic Violence Victim Fund (.032787).

C. In criminal actions and proceedings in district court for a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, there shall be assessed as court costs a fixed fee of \$136. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Processing fee (General Fund) (.257353);
2. Virginia Crime Victim-Witness Fund (.022059);
3. Regional Criminal Justice Training Academies Fund (.007353);
4. Courthouse Construction/Maintenance Fund (.014706);
5. Criminal Injuries Compensation Fund (.044118);
6. Intensified Drug Enforcement Jurisdiction Fund (.029412);
7. Drug Offender Assessment and Treatment Fund (.551471);
8. Forensic laboratory fee and sentencing/supervision fee (General Fund) (.058824); and
9. Virginia Sexual and Domestic Violence Victim Fund (.014706).

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59 D. In traffic infractions tried in district court, there shall be assessed as court costs a fixed fee of
60 \$51. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by
61 law, to the following funds in the fractional amounts designated:

- 62 1. Processing fee (General Fund) (.764706);
- 63 2. Virginia Crime Victim-Witness Fund (.058824);
- 64 3. Regional Criminal Justice Training Academies Fund (.019608);
- 65 4. Courthouse Construction/Maintenance Fund (.039216);
- 66 5. Intensified Drug Enforcement Jurisdiction Fund (.078431); and
- 67 6. Virginia Sexual and Domestic Violence Victim Fund (.039216).

68 § 17.1-275.2. Fixed fee for felony reduced to misdemeanor.

69 In circuit court, upon the conviction of a person of any and each misdemeanor reduced from a felony
70 charge, or upon a deferred disposition of proceedings in the case of any and each misdemeanor reduced
71 from a felony charge and deferred pursuant to the terms and conditions of § 4.1-305, 16.1-278.8,
72 16.1-278.9, 18.2-57.3, 18.2-104, or 19.2-303.2, there shall be assessed as court costs a fee of \$202, to be
73 known as the fixed fee for felony reduced to misdemeanor. However, this section shall not apply to
74 those proceedings provided for in § 17.1-275.8.

75 The amount collected, in whole or in part, for the fixed fee for felony reduced to misdemeanor shall
76 be apportioned to the following funds in the fractional amounts designated:

- 77 1. Sentencing/supervision fee (General Fund) (.1904950);
- 78 2. Forensic science fund (.1918317);
- 79 3. Court reporter fund (.1647030);
- 80 4. Witness expenses/expert witness fund (.0099010);
- 81 5. Virginia Crime Victim-Witness Fund (.0148515);
- 82 6. Intensified Drug Enforcement Jurisdiction Fund (.0198020);
- 83 7. Criminal Injuries Compensation Fund (.0990099);
- 84 8. Commonwealth's attorney fund (state share) (.0371287);
- 85 9. Commonwealth's attorney fund (local share) (.0371287);
- 86 10. Regional Criminal Justice Academy Training Fund (.0049505);
- 87 11. Warrant fee (.0594059);
- 88 12. Courthouse construction/maintenance fund (.0099010); and
- 89 13. Clerk of the circuit court (.1608911).

90 § 17.1-275.7. Fixed misdemeanor fee.

91 In circuit court, upon (i) conviction of any and each misdemeanor, not originally charged as a felony;
92 (ii) a deferred disposition of proceedings in the case of any and each misdemeanor not originally
93 charged as a felony and deferred pursuant to the terms and conditions of § 4.1-305, 16.1-278.8,
94 16.1-278.9, 18.2-57.3, 18.2-104, or 19.2-303.2; (iii) any and each conviction of a traffic infraction or
95 referral to a driver improvement clinic or traffic school in lieu of a finding of guilt for a traffic
96 infraction; or (iv) proof of compliance with law under §§ 46.2-104 and 46.2-1157, there shall be
97 assessed as court costs a fee of \$70, to be known as the fixed misdemeanor fee. However, this section
98 shall not apply to those proceedings provided for in § 17.1-275.8. This fee shall be in addition to any
99 fee assessed in the district court.

100 The amount collected, in whole or in part, for the fixed misdemeanor fee shall be apportioned, as
101 provided by law, to the following funds in the fractional amounts designated:

- 102 1. Sentencing/supervision fee (General Fund) (.0142857);
- 103 2. Witness expenses/expert witness fee (General Fund) (.0285714);
- 104 3. Virginia Crime Victim-Witness Fund (.0428571);
- 105 4. Intensified Drug Enforcement Jurisdiction Fund (.0571429);
- 106 5. Criminal Injuries Compensation Fund (.2857143);
- 107 6. Commonwealth's Attorney Fund (state share) (.0357143);
- 108 7. Commonwealth's Attorney Fund (local share) (.0357143);
- 109 8. Regional Criminal Justice Academy Training Fund (.0142857);
- 110 9. Warrant fee, as prescribed by § 17.1-272 (.1714286);
- 111 10. Courthouse Construction/Maintenance Fund (.0285714); and
- 112 11. Clerk of the circuit court (.2857143).

113 § 18.2-104. Punishment for multiple offenses of larceny; deferred petit larceny proceedings; penalty.

114 A. When a person is convicted of an offense of larceny or any offense deemed to be or punished as
115 larceny under any provision of the Code, and it is alleged in the warrant, indictment or information on
116 which he is convicted, and admitted, or found by the jury or judge before whom he is tried, that he has
117 been before convicted in the Commonwealth of Virginia or in another jurisdiction for any offense of
118 larceny or any offense deemed or punishable as larceny, or of any substantially similar offense in any
119 other jurisdiction, regardless of whether the prior convictions were misdemeanors, felonies or a
120 combination thereof, he shall be confined in jail not less than thirty days nor more than twelve months;

121 and for a third, or any subsequent offense, he shall be guilty of a Class 6 felony.

122 *B. When any person is before the court who has not previously (i) been convicted of petit larceny or*
123 *any offense deemed or punishable as petit larceny in Virginia or any other state or the United States, or*
124 *(ii) had a proceeding against him for violation of such an offense dismissed as authorized in this*
125 *subsection, the court may, upon entry of a plea of guilty or not guilty, if the facts found by the court*
126 *would justify a finding of guilt of such an offense, without entering a judgment of guilt and with the*
127 *consent of the accused, defer further proceedings and place him on probation subject to appropriate*
128 *terms and conditions, including the payment to the owner of the property of a sum of no less than \$100*
129 *nor more than \$500, which shall be a loss-prevention fee to be paid in addition to any restitution*
130 *ordered by the court.*

131 *Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the*
132 *proceedings against him. Discharge and dismissal under this section shall be without adjudication of*
133 *guilt and is a conviction only for the purposes of applying this section in subsequent proceedings. Upon*
134 *violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise*
135 *provided.*

136 § 19.2-303.4. Payment of costs when proceedings deferred and defendant placed on probation.

137 A circuit or district court, which has deferred further proceedings, without entering a judgment of
138 guilt, and placed a defendant on probation subject to terms and conditions pursuant to § 4.1-305,
139 16.1-278.8, 16.1-278.9, 18.2-57.3, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-104, 18.2-251 or 19.2-303.2, shall
140 impose upon the defendant costs.