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HOUSE BILL NO. 974

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 8.01-449, 17.1-258.3, 17.1-258.3:1, 17.1-276, 17.1-279, and 17.1-293 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 17.1-258.3:2, relating to technological efficiencies in circuit court clerks' offices.

Patron—Kilgore

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-449, 17.1-258.3, 17.1-258.3:1, 17.1-276, 17.1-279, and 17.1-293 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 17.1-258.3:2 as follows:

§ 8.01-449. How judgments are docketed.

A. The judgment docket required by § 8.01-446 may be kept in a well-bound book, or any other media permitted by § 17.1-240. The date and time of docketing shall be recorded with each judgment docketed. The clerk of the circuit court of any county using card files on July 1, 1975, may continue to use the card file system. The docketing may be done by copying the wording of the judgment order verbatim or by abstracting the information therefrom into a book or into fixed fields of an electronic data storage system. Where a procedural microphotographic system is used, the docketing may be done by recording and storing a retrievable image of the judgment order, judgment abstract, or other source document such as a certificate of assignment or release. Where an electronic imaging system is used, the document image shall be stored in a data format which permits recall of the image. Any judgment docketed pursuant to this subsection shall contain the information required by subsection B.

B. Where a well-bound book is used for the judgment docket there shall be stated in separate columns (i) the date and amount of the judgment, (ii) the time from which it bears interest, (iii) the costs, (iv) the full names of all the parties thereto, including the address, date of birth and the last four digits of the social security number, if known, of each party against whom judgment is rendered, (v) the alternative value of any specific property recovered by it, (vi) the date and the time of docketing it, (vii) the amount and date of any credits thereon, (viii) the court by which it was rendered and the case number, and (ix) when paid off or discharged in whole or in part, the time of payment or discharge and by whom made when there is more than one defendant. And in case of a judgment or decree by confession, the clerk shall also enter in such docket the time of day at which the same was confessed, or at which the same was received in his office to be entered of record. There shall also be shown on such book the name of the plaintiff's attorney, if any.

C. Error or omission in the entry of the address or addresses or the social security number or numbers of each party against whom judgment is rendered shall in no way affect the validity, finality or priority of the judgment docketed.

D. Beginning July 1, ~~2010~~ 2012, any judgment made available to subscribers via secure remote access pursuant to § 17.1-294 shall contain only the last four digits of the social security number of any party. However, the information otherwise required in the judgment docket pursuant to this section shall be provided.

E. The attorney or party who prepares or submits the judgment for recordation has the responsibility for ensuring that only the last four digits of the social security number are included in the judgment prior to the instrument's being submitted for recordation. The clerk has the authority to reject any judgment that does not comply with the provisions of this section.

§ 17.1-258.3. Electronic filing in civil or criminal actions.

A clerk of circuit court may establish a system for electronic filing in civil or criminal actions that shall be governed by Rule 1:17 of the Rules of Supreme Court of Virginia. The circuit court clerk shall enter into an agreement with each person whom the clerk authorizes to file documents electronically, specifying the electronic filing procedures to be followed, including, but not limited to, security procedures, as defined in the Uniform Electronic Transactions Act, for transmitting notarized documents. *The clerk may charge a fee to be assessed for each document filed electronically in an amount not to exceed \$5 per document. The fee shall be paid to the clerk's office and deposited by the clerk into the clerk's nonreverting local fund to be used to cover operational expenses. Operational expenses shall include, but not be limited to, (i) computer support, maintenance, enhancements, upgrades, and replacements and office automation and information technology equipment including software and*

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59 conversion services; (ii) preserving, maintaining, and enhancing court records, including but not limited
60 to the costs of repairs, maintenance, consulting services, service contracts, redaction of social security
61 numbers from land or other records, and system replacements or upgrades; and (iii) improving public
62 access to records maintained by the clerk. Nothing herein shall be construed to prevent the clerk from
63 entering into agreements with designated application service providers to provide all or part of the
64 network or system for electronic filing of civil or criminal records as provided herein.

65 § 17.1-258.3:1. Electronic filing of land records.

66 A clerk of a circuit court may provide a network or system for electronic filing of land records in
67 accordance with the Uniform Real Property Electronic Recording Act (§ 55-142.10 et seq.) and the
68 provisions of Article 2.1 (§ 55-66.8 et seq.) of Chapter 4 of Title 55 regarding the satisfaction of
69 mortgages. The clerk may charge a fee to be assessed for each instrument recorded electronically in an
70 amount not to exceed \$5 per document. The fee shall be paid to the clerk's office and deposited by the
71 clerk into a ~~special~~ the clerk's nonreverting local fund to be used to cover operational expenses of such
72 network or system. Operational expenses of such network or system shall include, but not be limited to,
73 (i) computer support, maintenance, enhancements, upgrades, and replacements; and office automation
74 and information technology equipment including software and conversion services; (ii) preserving,
75 maintaining, and enhancing court records, including but not limited to the costs of repairs, maintenance,
76 consulting services, service contracts, redaction of social security numbers from land or other records,
77 and system replacements or upgrades; and (iii) improving public access to records maintained by the
78 clerk. The clerk shall enter into an electronic filing agreement with each filer in accordance with
79 Virginia Real Property Electronic Recording Standards established by the Virginia Information
80 Technologies Agency. Nothing herein shall be construed to prevent the clerk from entering into
81 agreements with designated application service providers to provide all or part of the network or system
82 for electronic filing of land records as provided herein.

83 § 17.1-258.3:2. Official certificates and certified records in digital form.

84 A clerk of circuit court may establish a system for providing official certificates and certified records
85 in digital form of any document maintained by the clerk. The clerk or his designated application service
86 provider may assess an additional fee not to exceed \$10 per official certificate accompanying or
87 attesting the certified records, subject to subdivision A 8 of § 17.1-275 and to the exemptions provided
88 in § 17.1-267. The fee shall be paid to the clerk's office and deposited by the clerk into the clerk's
89 nonreverting local fund to be used to cover operational expenses. Operational expenses shall include,
90 but not be limited to, (i) computer support, maintenance, enhancements, upgrades, and replacements and
91 office automation and information technology equipment including software and conversion services; (ii)
92 preserving, maintaining and enhancing court records, including but not limited to the costs of repairs,
93 maintenance, consulting services, service contracts, redaction of social security numbers from land or
94 other records, and system replacements or upgrades; and (iii) improving public access to records
95 maintained by the clerk.

96 § 17.1-276. Fee allowed for providing secure remote access to land records.

97 A. A clerk of the circuit court who provides secure remote access to land records pursuant to
98 § 17.1-294 may charge a fee established by the clerk to cover the operational expenses of such
99 electronic access, including, but not limited to, computer support, maintenance, enhancements, upgrades,
100 replacements, and consulting services. Operational expenses shall include, but not be limited to, (i)
101 computer support, maintenance, enhancements, upgrades, and replacements and office automation and
102 information technology equipment including software and conversion services; (ii) preserving,
103 maintaining, and enhancing court records, including but not limited to the costs of repairs, maintenance,
104 consulting services, service contracts, redaction of social security numbers from land or other records,
105 and system replacements or upgrades; and (iii) improving public access to records maintained by the
106 clerk. A flat fee may be assessed for each subscriber, as defined in § 17.1-295, in an amount not to
107 exceed \$50 per month. The fee shall be paid to the clerk's office and deposited by the clerk into a
108 ~~special~~ the clerk's nonreverting local fund to be used to cover operational expenses of such electronic
109 access, as defined herein. The circuit court clerk shall enter into an agreement with each person whom
110 the clerk authorizes to have remote access, in accordance with the security standards established by the
111 Virginia Information Technologies Agency.

112 The Office of the Attorney General, Division of Debt Collection, shall be exempt from paying any
113 fee for remote access to land records. If any clerk contracts with an outside vendor to provide remote
114 access to land records to subscribers, such contract shall contain a provision exempting the Office of the
115 Attorney General, Division of Debt Collection, from paying any access or subscription fee.

116 B. (Expires September 30, 2012) The clerk of the Circuit Court of Prince William County may
117 establish a pilot program under which the clerk assesses a daily fee for remote access to land records
118 and a separate fee per image downloaded in an amount not to exceed the fee provided in subdivision A
119 8 of § 17.1-275. The clerk shall make a report on any such pilot program to the House Committee for
120 Courts of Justice and the Senate Committee for Courts of Justice on or before September 30, 2012. The

report shall provide a summary of the pilot program and include the level of participation, the costs of the program, and the revenues generated by the program.

§ 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 "Local 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~~ The \$5 local fee shall be deposited by the State Treasurer into a trust fund clerk into the clerk's nonreverting local fund to be used for 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 pursuant to § 17.1-294; and (iii) covering operational expenses as defined in § 17.1-276. The State Treasurer clerk shall maintain a record of such \$5 deposits. However, such funds shall not be used for personnel costs within the circuit court clerk's office.

B. ~~Four dollars of every \$5 fee shall~~ In addition to the fees otherwise authorized by this chapter, the clerk of each circuit court shall assess a \$1 fee, known as the "State 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. The \$1 state fee shall be paid by the clerk to the Compensation Board and may be allocated by the Compensation Board from the trust fund to those individual clerks' offices whose deposits into the clerk's nonreverting fund would not be sufficient for 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 pursuant to § 17.1-294; (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, land records, consulting services, service contracts, redaction of social security numbers from land records, and system replacements or upgrades; and (v) improving public access to court records maintained by the clerk. However, such funds shall not be used for personnel costs within the circuit court clerk's office. 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 provide secure remote access to those land records on or before July 1, 2008.

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 provide secure remote access to those land records on or before July 1, 2008. The State Treasurer shall maintain a record of such \$1 deposits.

DC. 1. 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. The clerk may require a person who is a nonresident of the Commonwealth, prior to becoming a subscriber, to demonstrate that such person is authorized to do business in Virginia and is in good standing with the State Corporation Commission or other applicable state or federal regulatory agency. Compliance with secure remote access standards developed by the Virginia Information Technologies Agency pursuant to § 17.1-294 shall be certified by the individual circuit court clerks' offices to the Compensation Board. The individual circuit court clerk's office or its designated application service provider shall certify compliance with such secure remote access standards. Nothing in this section shall prohibit the Compensation Board from allocating trust fund money to individual circuit court clerks'

182 offices for the purpose of complying with such secure remote access standards or redaction of social
183 security numbers from land records.

184 2. If a circuit court clerk proceeds to accelerate the redaction of social security numbers from land
185 records using local funds, the clerk may request reimbursement for such expenditures from the
186 Technology Trust Fund in accordance with clause (iv) of subsection B to provide reimbursement to the
187 locality for advancing such funds in the fiscal year in which such local expenditures are incurred. For
188 local expenditures to accelerate the redaction of social security numbers from land records incurred in
189 prior fiscal years for which reimbursement has not been previously made, the Compensation Board may
190 approve payment to the locality in accordance with clause (iv) of subsection B upon certification by the
191 locality that it has advanced such funds.

192 3. Every circuit court clerk shall provide secure remote access to land records pursuant to § 17.1-294
193 on or before July 1, 2008.

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

197 *F.* If a circuit court clerk provides secure remote access to land records on or before July 1, 2008,
198 then that clerk may apply to the Compensation Board for an allocation from the Technology Trust Fund
199 for automation and technology improvements in his office that are not related to land records. *E.* If such
200 an application includes automation or technology improvements that would require an interface with the
201 case management system or the financial management system operated and maintained by the Executive
202 Secretary of the Supreme Court for the purpose of providing electronic information to state agencies in
203 accordance with § 17.1-502, the circuit court clerk, or the court's designated application service provider,
204 shall certify to the Compensation Board that such automation or technology improvements will comply
205 with the security and data standards of the systems operated and maintained by the Executive Secretary
206 of the Supreme Court. Such request shall not exceed the deposits into the trust fund credited to that
207 locality.

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

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

215 *IH.* Effective July 1, 2006, except for transfers pursuant to this section, there shall be no transfers out
216 of the Technology Trust Fund, including transfers to the general fund.

217 § 17.1-293. Posting and availability of certain information on the Internet; prohibitions.

218 A. Notwithstanding Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 or subsection B of this section, it
219 shall be unlawful for any court clerk to disclose the social security number or other identification
220 numbers appearing on driver's licenses or information on credit cards, debit cards, bank accounts, or
221 other electronic billing and payment systems that was supplied to a court clerk for the purpose of paying
222 fees, fines, taxes, or other charges collected by such court clerk. The prohibition shall not apply where
223 disclosure of such information is required (i) to conduct or complete the transaction for which such
224 information was submitted or (ii) by other law or court order.

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

230 C. Each such clerk shall post notice that includes a list of the documents routinely posted on its
231 website. *However, the clerk shall not post information on his website that includes private activity for*
232 *private financial gain.*

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

235 E. This section shall not apply to the following:

236 1. Providing access to any document among the land records via secure remote access pursuant to
237 § 17.1-294;

238 2. Postings related to legitimate law-enforcement purposes;

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

241 4. Postings of instruments and records filed or recorded prior to 1907; and

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

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

G. The court clerk 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 July 1, 2005.

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