

10100684D

SENATE BILL NO. 258

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact §§ 17.1-267, 17.1-275, 17.1-275.5, and 19.2-349 of the Code of Virginia, relating to fees; funding of clerks' offices.

Patron—Lucas

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-267, 17.1-275, 17.1-275.5, and 19.2-349 of the Code of Virginia are amended and reenacted as follows:

§ 17.1-267. Services for which clerks may not charge.

A. No clerk shall charge for taking bond from, administering oath to, or making or copying orders as to the appointment or qualification of any judge, magistrate, sheriff, treasurer, commissioner of the revenue, or of a deputy of any of them, or of any escheator, supervisor, or of a guardian or conservator, when his bond is in a penalty not exceeding \$1,000.00, or for making or copying orders as to county allowances, or grand juries, and administering the necessary oaths.

B. No clerk shall charge for copying or making for or furnishing to the Department of Corrections or a federal probation officer a certified copy of a criminal judgment order or criminal sentencing order.

C. No clerk shall charge a fee for (i) ~~executing any order of publication under § 17.1-626; (ii) keeping, preserving, and holding available for public inspection judgment records; and making entries in and indexing such judgments, or discharging, or marking satisfied, a lien under §§ 15.2-2604, 15.2-2605 and 15.2-2120; (iii); (ii) docketing judgment on forfeited recognizance or bond under § 19.2-147; (iv) or (iii) making out reports to the Central Criminal Records Exchange under § 19.2-390; (v) recording a lien in the miscellaneous lien book under § 43-42 or § 43-43; or (vi) filing an appraiser's report under § 56-436.~~

D. No clerk shall charge a fee for (i) ~~recording the reports of special receivers and commissioners as required by § 8.01-617; (ii) copying in the Induction and Discharge Record information obtained from draft boards or recording the discharge papers, or certified copy of such, of a person who has served in the armed forces of the United States; or (iii) receiving any mark of designation under § 59.1-103.~~

§ 17.1-275. Fees collected by clerks of circuit courts; generally.

A. A clerk of a circuit court shall, for services performed by virtue of his office, charge the following fees:

1. [Repealed.]

2. For recording and indexing in the proper book any writing and all matters therewith, or for recording and indexing anything not otherwise provided for, \$16 for an instrument or document consisting of 10 or fewer pages or sheets; \$30 for an instrument or document consisting of 11 to 30 pages or sheets; and \$50 for an instrument or document consisting of 31 or more pages or sheets. Whenever any writing to be recorded includes plat or map sheets no larger than eight and one-half inches by 14 inches, such plat or map sheets shall be counted as ordinary pages for the purpose of computing the recording fee due pursuant to this section. A fee of \$15 per page or sheet shall be charged with respect to plat or map sheets larger than eight and one-half inches by 14 inches. Only a single fee as authorized by this subdivision shall be charged for recording a certificate of satisfaction that releases the original deed of trust and any corrected or revised deeds of trust. One dollar and fifty cents of the fee collected for recording and indexing shall be designated for use in preserving the permanent records of the circuit courts. The sum collected for this purpose shall be administered by The Library of Virginia in cooperation with the circuit court clerks.

3. For appointing and qualifying any personal representative, committee, trustee, guardian, or other fiduciary, in addition to any fees for recording allowed by this section, \$20 for estates not exceeding \$50,000, \$25 for estates not exceeding \$100,000 and \$30 for estates exceeding \$100,000. No fee shall be charged for estates of \$5,000 or less.

4. For entering and granting and for issuing any license, other than a marriage license or a hunting and fishing license, and administering an oath when necessary, \$10.

5. For issuing a marriage license, attaching certificate, administering or receiving all necessary oaths or affidavits, indexing and recording, \$10.

6. For making out any bond, other than those under § 17.1-267 or subdivision A 4, administering all necessary oaths and writing proper affidavits, \$3.

INTRODUCED

SB258

59 7. For all services rendered by the clerk in any garnishment or attachment proceeding, the clerk's fee
60 shall be \$15 in cases not exceeding \$500 and \$25 in all other cases.

61 8. For making out a copy of any paper, record, or electronic record to go out of the office, which is
62 not otherwise specifically provided for herein, a fee of \$0.50 for each page or, if an electronic record,
63 each image. From such fees, the clerk shall reimburse the locality the costs of making out the copies
64 and pay the remaining fees directly to the Commonwealth. The funds to recoup the cost of making out
65 the copies shall be deposited with the county or city treasurer or Director of Finance, and the governing
66 body shall budget and appropriate such funds to be used to support the cost of copies pursuant to this
67 subdivision. For purposes of this section, the costs of making out the copies shall include lease and
68 maintenance agreements for the equipment used to make out the copies, but shall not include salaries or
69 related benefits. The costs of copies shall otherwise be determined in accordance with § 2.2-3704.
70 ~~However, there shall be no charge to the recipient of a final order or decree to send an attested copy to~~
71 ~~such party.~~

72 9. For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying
73 it, the clerk shall charge \$2 and for attaching the certificate of the judge, if the clerk is requested to do
74 so, the clerk shall charge an additional \$0.50.

75 10. In any case in which a person is convicted of a violation of any provision of Article 1
76 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk
77 shall assess a fee of \$150 for each felony conviction and each felony disposition under § 18.2-251 which
78 shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and
79 Treatment Fund.

80 11. In any case in which a person is convicted of a violation of any provision of Article 1
81 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk
82 shall assess a fee for each misdemeanor conviction and each misdemeanor disposition under § 18.2-251,
83 which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and
84 Treatment Fund as provided in § 17.1-275.8.

85 12. Upon the defendant's being required to successfully complete traffic school or a driver
86 improvement clinic in lieu of a finding of guilty, the court shall charge the defendant fees and costs as
87 if he had been convicted.

88 13. In all civil actions that include one or more claims for the award of monetary damages the clerk's
89 fee chargeable to the plaintiff shall be \$60 in cases seeking recovery not exceeding \$50,000, \$10 of
90 which shall be apportioned to the Courts Technology Fund established under § 17.1-132; \$110 in cases
91 seeking recovery not exceeding \$100,000, \$10 of which shall be apportioned to the Courts Technology
92 Fund established under § 17.1-132; and \$160 in cases seeking recovery exceeding \$100,000, \$10 of
93 which shall be apportioned to the Courts Technology Fund established under § 17.1-132. A fee of \$25
94 shall be paid by the plaintiff at the time of instituting a condemnation case, in lieu of any other fees.
95 There shall be no fee charged for the filing of a cross-claim or setoff in any pending action. However,
96 the fees prescribed by this subdivision shall be charged upon the filing of a counterclaim or a claim
97 impleading a third-party defendant. The fees prescribed above shall be collected upon the filing of
98 papers for the commencement of civil actions. This subdivision shall not be applicable to cases filed in
99 the Supreme Court of Virginia.

100 13a. For the filing of any petition seeking court approval of a settlement where no action has yet
101 been filed, the clerk's fee, chargeable to the petitioner, shall be \$50, to be paid by the petitioner at the
102 time of filing the petition.

103 14. In addition to the fees chargeable for civil actions, for the costs of proceedings for judgments by
104 confession under §§ 8.01-432 through 8.01-440, the clerk shall tax as costs (i) the cost of registered or
105 certified mail; (ii) the statutory writ tax, in the amount required by law to be paid on a suit for the
106 amount of the confessed judgment; (iii) for the sheriff for serving each copy of the order entering
107 judgment, \$12; and (iv) for docketing the judgment and issuing executions thereon, the same fees as
108 prescribed in subdivision A 17.

109 15. For qualifying notaries public, including the making out of the bond and any copies thereof,
110 administering the necessary oaths, and entering the order, \$10.

111 16. For each habeas corpus proceeding, the clerk shall receive \$10 for all services required
112 thereunder. This subdivision shall not be applicable to such suits filed in the Supreme Court of Virginia.

113 17. For docketing and indexing a judgment from any other court of this Commonwealth, for
114 docketing and indexing a judgment in the new name of a judgment debtor pursuant to the provisions of
115 § 8.01-451, but not when incident to a divorce, for noting and filing the assignment of a judgment
116 pursuant to § 8.01-452, a fee of \$5; and for issuing an abstract of any recorded judgment, when proper
117 to do so, a fee of \$5; and for filing, docketing, indexing and mailing notice of a foreign judgment, a fee
118 of \$20.

119 18. For all services rendered by the clerk in any court proceeding for which no specific fee is
120 provided by law, the clerk shall charge \$10, to be paid by the party filing said papers at the time of

121 filing; however, this subdivision shall not be applicable in a divorce cause prior to and including the
122 entry of a decree of divorce from the bond of matrimony.

123 19., 20. [Repealed.]

124 21. For making the endorsements on a forthcoming bond and recording the matters relating to such
125 bond pursuant to the provisions of § 8.01-529, \$1.

126 22. For all services rendered by the clerk in any proceeding pursuant to § 57-8 or 57-15, \$10.

127 23. For preparation and issuance of a subpoena duces tecum, \$5.

128 24. For all services rendered by the clerk in matters under § 8.01-217 relating to change of name,
129 \$20; however, this subdivision shall not be applicable in cases where the change of name is incident to
130 a divorce.

131 25. For providing court records or documents on microfilm, per frame, \$0.50.

132 26. In all divorce and separate maintenance proceedings, and all civil actions that do not include one
133 or more claims for the award of monetary damages, the clerk's fee chargeable to the plaintiff shall be
134 \$60, \$10 of which shall be apportioned to the Courts Technology Fund established under § 17.1-132 to
135 be paid by the plaintiff at the time of instituting the suit, which shall include the furnishing of a duly
136 certified copy of the final decree. The fees prescribed by this subdivision shall be charged upon the
137 filing of a counterclaim or a claim impleading a third-party defendant. However, no fee shall be charged
138 for the filing of a cross-claim or setoff in any pending suit. In divorce cases, when there is a merger of
139 a divorce of separation a mensa et thoro into a decree of divorce a vinculo, the above mentioned fee
140 shall include the furnishing of a duly certified copy of both such decrees.

141 27. For the acceptance of credit cards in lieu of money to collect and secure all fees, including filing
142 fees, fines, restitution, forfeiture, penalties and costs, the clerk shall collect from the person presenting
143 such credit card a reasonable convenience fee not to exceed four percent of the amount paid.

144 28. For the return of any check unpaid by the financial institution on which it was drawn or notice is
145 received from the credit card issuer that payment will not be made for any reason, the clerk shall
146 collect, if allowed by the court, a fee of \$20 or 10 percent of the amount to be paid, whichever is
147 greater, in accordance with § 19.2-353.3.

148 29. For all services rendered, except in cases in which costs are assessed pursuant to § 17.1-275.1,
149 17.1-275.2, 17.1-275.3, or 17.1-275.4, in an adoption proceeding, a fee of \$20, in addition to the fee
150 imposed under § 63.2-1246, to be paid by the petitioner or petitioners. For each petition for adoption
151 filed pursuant to § 63.2-1201, except those filed pursuant to subdivisions 5 and 6 of § 63.2-1210, an
152 additional \$50 filing fee as required under § 63.2-1201 shall be deposited in the Putative Father Registry
153 Fund pursuant to § 63.2-1249.

154 30. For issuing a duplicate license for one lost or destroyed as provided in § 29.1-334, a fee in the
155 same amount as the fee for the original license.

156 31. For the filing of any petition as provided in §§ 33.1-124, 33.1-125 and 33.1-129, a fee of \$5 to
157 be paid by the petitioner; and for the recordation of a certificate or copy thereof, as provided for in
158 § 33.1-122, as well as for any order of the court relating thereto, the clerk shall charge the same fee as
159 for recording a deed as provided for in this section, to be paid by the party upon whose request such
160 certificate is recorded or order is entered.

161 32. For making up, certifying and transmitting original record pursuant to the Rules of the Supreme
162 Court, including all papers necessary to be copied and other services rendered, except in cases in which
163 costs are assessed pursuant to § 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8,
164 or 17.1-275.9, a fee of \$20.

165 33. [Repealed.]

166 34. For filings, etc., under the Uniform Federal Lien Registration Act (§ 55-142.1 et seq.), the fees
167 shall be as prescribed in that Act.

168 35. For filing the appointment of a resident agent for a nonresident property owner in accordance
169 with § 55-218.1, a fee of \$10.

170 36. [Repealed.]

171 37. For recordation of certificate and registration of names of nonresident owners in accordance with
172 § 59.1-74, a fee of \$10.

173 38. For maintaining the information required under the Overhead High Voltage Line Safety Act
174 (§ 59.1-406 et seq.), the fee as prescribed in § 59.1-411.

175 39. For lodging, indexing and preserving a will in accordance with § 64.1-56, a fee of \$2.

176 40. For filing a financing statement in accordance with § 8.9A-505, the fee shall be as prescribed
177 under § 8.9A-525.

178 41. For filing a termination statement in accordance with § 8.9A-513, the fee shall be as prescribed
179 under § 8.9A-525.

180 42. For filing assignment of security interest in accordance with § 8.9A-514, the fee shall be as
181 prescribed under § 8.9A-525.

182 43. For filing a petition as provided in §§ 37.2-1001 and 37.2-1013, the fee shall be \$10.

183 44. For issuing any execution, and recording the return thereof, a fee of \$1.50.

184 45. For the preparation and issuance of a summons for interrogation by an execution creditor, a fee
185 of \$5. If there is no outstanding execution, and one is requested herewith, the clerk shall be allowed an
186 additional fee of \$1.50, in accordance with subdivision A 44.

187 B. In accordance with § 17.1-281, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A
188 18 if applicable, A 20, A 22, A 24, A 26, A 29 and A 31 to be designated for courthouse construction,
189 renovation or maintenance.

190 C. In accordance with § 17.1-278, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A
191 18 if applicable, A 20, A 22, A 24, A 26, A 29 and A 31 to be designated for services provided for the
192 poor, without charge, by a nonprofit legal aid program.

193 D. In accordance with § 42.1-70, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A
194 18 if applicable, A 20, A 22, A 24, A 26, A 29 and A 31 to be designated for public law libraries.

195 E. The provisions of this section shall control the fees charged by clerks of circuit courts for the
196 services above described.

197 *F. Effective July 1, 2012, all fees assessed under this section shall be paid to the clerk's office as*
198 *local fees and deposited by the clerk into a special nonreverting local fund to be used to cover*
199 *operational expenses of the clerk's office. However, the clerk shall file a report with the Compensation*
200 *Board along with 20 percent of the gross receipts payable to the Treasurer of Virginia to be held by the*
201 *Compensation Board in a trust fund. Effective July 1, 2012, except for transfers pursuant to this section,*
202 *there shall be no transfers out of the Circuit Court Clerks' Trust Fund, including transfers to the*
203 *general fund. The allocations pursuant to this subsection shall give priority to those individual clerks'*
204 *offices whose deposits into the Trust Fund would not be sufficient to cover the operational expenses of*
205 *the clerk's office. Effective January 1, 2013, the funding for clerks' offices under the general fund shall*
206 *be reduced by the amount of local funds deposited by the clerk in the special nonreverting local fund.*
207 *The Compensation Board shall submit a report by September 30 of each year to the House*
208 *Appropriations Committee and the Senate Finance Committee making recommendations as to the clerk's*
209 *fees necessary in order to operate the clerks' offices without general fund appropriations.*

210 § 17.1-275.5. Amounts to be added; judgment in favor of the Commonwealth.

211 A. The clerk shall assess, in addition to the fees provided for by §§ 17.1-275.1 through 17.1-275.4,
212 17.1-275.7, 17.1-275.8, or § 17.1-275.9, the following costs:

213 1. Any amount paid by the Commonwealth for legal representation of the defendant;

214 2. Any amount paid for trial transcripts;

215 3. Extradition costs;

216 4. Costs of psychiatric evaluation;

217 5. Costs taxed against the defendant as appellant under Rule 5A:30 of the Rules of the Supreme
218 Court;

219 6. Any fee for a returned check or disallowed credit card charge assessed pursuant to subdivision A
220 28 of § 17.1-275;

221 7. Any jury costs;

222 8. Any assessment made pursuant to subdivision A 10 of § 17.1-275;

223 9. Any fees prescribed in §§ 18.2-268.8 and 46.2-341.26:8;

224 10. Any court costs related to an ignition interlock device;

225 11. Any fee for testing for HIV;

226 12. Any fee for processing an individual admitted to jail as prescribed in § 15.2-1613.1;

227 13. Any fee for courthouse security personnel as prescribed in § 53.1-120;

228 14. Any fee for a DNA sample as prescribed in § 19.2-310.2;

229 15. Reimbursement to the Commonwealth of medical fees as prescribed in § 19.2-165.1;

230 16. Any fee for a local criminal justice training academy as prescribed in § 9.1-106; and

231 17. Any fee prescribed by §§ 16.1-69.48:1.01 and 17.1-275.11.

232 B. The total amount of assessments described in subsection A of this section, including the fees
233 provided for by §§ 17.1-275.1 through 17.1-275.4, 17.1-275.7, 17.1-275.8, or § 17.1-275.9, and no other,
234 ~~shall be forthwith~~ may be docketed by the clerk as a judgment against the defendant in favor of the
235 Commonwealth.

236 § 19.2-349. Responsibility for collections; clerks to report unsatisfied fines, etc.; duty of attorneys for
237 Commonwealth; duties of Department of Taxation.

238 A. The clerk of the circuit court and district court of every county and city shall submit to the judge
239 of his court, the Department of Taxation, the State Compensation Board and the attorney for the
240 Commonwealth of his county or city a monthly report of all fines, costs, forfeitures and penalties which
241 are delinquent more than 30 days, including court-ordered restitution of a sum certain, imposed in his
242 court for a violation of state law or a local ordinance which remain unsatisfied, including those which
243 are delinquent in installment payments. The monthly report shall include the social security number or

244 driver's license number of the defendant, if known, and such other information as the Department of
245 Taxation and the Compensation Board deem appropriate. The Executive Secretary shall make the report
246 required by this subsection on behalf of those clerks who participate in the Supreme Court's automated
247 information system.

248 B. It shall be the duty of the attorney for the Commonwealth to cause proper proceedings to be
249 instituted for the collection and satisfaction of all fines, costs, forfeitures, penalties and restitution. The
250 attorney for the Commonwealth shall determine whether it would be impractical or uneconomical for
251 such service to be rendered by the office of the attorney for the Commonwealth. If the defendant does
252 not enter into an installment payment agreement under § 19.2-354, the attorney for the Commonwealth
253 and the clerk may agree to a process by which collection activity may be commenced 15 days after
254 judgment.

255 If the attorney for the Commonwealth does not undertake collection, he shall contract with (i) private
256 attorneys or private collection agencies, (ii) enter into an agreement with a local governing body, (iii)
257 enter into an agreement with the county or city treasurer, or (iv) use the services of the Department of
258 Taxation, upon such terms and conditions as may be established by guidelines promulgated by the
259 Office of the Attorney General, the Executive Secretary of the Supreme Court with the Department of
260 Taxation and the Compensation Board. If the attorney for the Commonwealth undertakes collection, he
261 shall follow the procedures established by the Department of Taxation and the Compensation Board.
262 Such guidelines shall not supersede contracts between attorneys for the Commonwealth and private
263 attorneys and collection agencies when active collection efforts are being undertaken. As part of such
264 contract, private attorneys or collection agencies shall be given access to the social security number of
265 the defendant in order to assist in the collection effort. Any such private attorney shall be subject to the
266 penalties and provisions of § 18.2-186.3.

267 The fees of any private attorneys or collection agencies shall be paid on a contingency fee basis ~~or~~
268 ~~of~~ *in addition to* the proceeds of the amounts collected. However, in no event shall such attorney or
269 collection agency receive a fee for amounts collected by the Department of Taxation under the Setoff
270 Debt Collection Act (§ 58.1-520 et seq.). A local treasurer undertaking collection pursuant to an
271 agreement with the attorney for the Commonwealth may collect the administrative fee authorized by
272 § 58.1-3958.

273 C. The Department of Taxation and the State Compensation Board shall be responsible for the
274 collection of any judgment which remains unsatisfied or does not meet the conditions of § 19.2-354.
275 Persons owing such unsatisfied judgments or failing to comply with installment payment agreements
276 under § 19.2-354 shall be subject to the delinquent tax collection provisions of Title 58.1. The
277 Department of Taxation and the State Compensation Board shall establish procedures to be followed by
278 clerks of courts, attorneys for the Commonwealth, other state agencies and any private attorneys or
279 collection agents and may employ private attorneys or collection agencies, or engage other state agencies
280 to collect the judgment. The Department of Taxation and the Commonwealth shall be entitled to deduct
281 a fee for services from amounts collected for violations of local ordinances.

282 The Department of Taxation and the State Compensation Board shall annually report to the Governor
283 and the General Assembly the total of fines, costs, forfeitures and penalties assessed, collected, and
284 unpaid and those which remain unsatisfied or do not meet the conditions of § 19.2-354 by each circuit
285 and district court. The report shall include the procedures established by the Department of Taxation and
286 the State Compensation Board pursuant to this section and a plan for increasing the collection of unpaid
287 fines, costs, forfeitures and penalties. The Auditor of Public Accounts shall annually report to the
288 Governor, the Executive Secretary of the Supreme Court and the General Assembly as to the adherence
289 of clerks of courts, attorneys for the Commonwealth and other state agencies to the procedures
290 established by the Department of Taxation and the State Compensation Board.