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SENATE BILL NO. 329

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 10, 2010)

(Patron Prior to Substitute—Senator Stuart)

A BILL to amend and reenact §§ 16.1-69.48:2, 17.1-132, and 17.1-275 of the Code of Virginia, relating to fees in civil cases.

Be it enacted by the General Assembly of Virginia:**1. That §§ 16.1-69.48:2, 17.1-132, and 17.1-275 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-69.48:2. Fees for services of district court judges and clerks and magistrates in civil cases.

Fees in civil cases for services performed by the judges or clerks of general district courts or magistrates in the event any such services are performed by magistrates in civil cases shall be as provided in this section, and, unless otherwise provided, shall be included in the taxed costs and shall not be refundable, except in case of error or as herein provided.

For all court and magistrate services in each distress, detinue, interrogatory summons, unlawful detainer, civil warrant, notice of motion, garnishment, attachment issued, or other civil proceeding, the fee shall be \$22 for the period between July 1, 2006, and December 31, 2006, and \$27 thereafter unless otherwise provided in this section or if the amount in controversy is \$200 or less, then the fee shall be \$22. No such fee shall be collected (i) in any tax case instituted by any county, city or town or (ii) in any case instituted by a school board for collection of overdue book rental fees. Of the fees collected under this section, \$5 of the fee collected for all court and magistrate services in each distress, detinue, interrogatory summons, unlawful detainer, civil warrant, notice of motion, garnishment, attachment issued, or other civil proceeding in excess of \$200 shall be apportioned to the Courts Technology Fund established under § 17.1-132 for the period between July 1, 2006, and December 31, 2006, and \$10 thereafter. Of any fees collected for these services where the amounts in controversy equal \$200 or less, \$10 from any such fees collected shall be apportioned to the Courts Technology Fund established under § 17.1-132.

The judge or clerk shall collect the foregoing fee at the time of issuing process. Any magistrate or other issuing officer shall collect the foregoing fee at the time of issuing process, and shall remit the entire fee promptly to the court to which such process is returnable, or to its clerk. When no service of process is had on a defendant named in any civil process other than a notice of motion for judgment, such process may be reissued once by the court or clerk at the court's direction by changing the return day of such process, for which service by the court or clerk there shall be no charge; however, reissuance of such process shall be within three months after the original return day.

The clerk of any district court may charge a fee for making a copy of any paper of record to go out of his office which is not otherwise specifically provided for. The amount of this fee shall be set in the discretion of the clerk but shall not exceed \$1 for the first two pages and \$0.50 for each page thereafter.

The fees prescribed in this section shall be the only fees charged in civil cases for services performed by such judges and clerks, and when the services referred to herein are performed by magistrates such fees shall be the only fees charged by such magistrates for the prescribed services.

§ 17.1-132. Courts Technology Fund.

A. There is hereby established the Courts Technology Fund as a special nonreverting fund to be administered by the Supreme Court of Virginia. A portion of the sums collected pursuant to §§ 16.1-69.48:2, 17.1-275, 17.1-328, and 17.1-418 as specified in each section shall be deposited into the state treasury to the credit of the Fund.

B. The Fund shall be established on the books of the Comptroller. Any funds remaining in the Fund at the end of the biennium shall not revert to the general fund, but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund. Except for transfers pursuant to this section, there shall be no transfers out of the Fund, including transfers to the general fund.

C. Money in the Fund shall be allocated at the direction of the Supreme Court of Virginia to staff, advance, update, maintain, replace, repair, and support the telecommunications and technology systems of the judicial system. The revenue raised in support of the Fund shall not be used to supplant current funding to the judicial branch.

§ 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

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

72 3. For appointing and qualifying any personal representative, committee, trustee, guardian, or other
73 fiduciary, in addition to any fees for recording allowed by this section, \$20 for estates not exceeding
74 \$50,000, \$25 for estates not exceeding \$100,000 and \$30 for estates exceeding \$100,000. No fee shall
75 be charged for estates of \$5,000 or less.

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

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

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

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

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

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

98 10. In any case in which a person is convicted of a violation of any provision of Article 1
99 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk
100 shall assess a fee of \$150 for each felony conviction and each felony disposition under § 18.2-251 which
101 shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and
102 Treatment Fund.

103 11. In any case in which a person is convicted of a violation of any provision of Article 1
104 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk
105 shall assess a fee for each misdemeanor conviction and each misdemeanor disposition under § 18.2-251,
106 which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and
107 Treatment Fund as provided in § 17.1-275.8.

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

111 13. In all civil actions that include one or more claims for the award of monetary damages the clerk's
112 fee chargeable to the plaintiff shall be ~~\$60500~~ in cases seeking recovery not exceeding \$50,000; ~~\$10 of~~
113 ~~which shall be apportioned to the Courts Technology Fund established under § 17.1-132;~~ ~~\$110~~ in cases
114 seeking recovery not exceeding \$100,000; ~~\$10 of which shall be apportioned to the Courts Technology~~
115 ~~Fund established under § 17.1-132;~~ ~~\$1 million~~ and ~~\$1601,000~~ in cases seeking recovery exceeding
116 \$100,000; ~~\$10 of which shall be apportioned to the Courts Technology Fund established under~~
117 ~~§ 17.1-132~~ ~~\$1 million~~. A fee of \$25 shall be paid by the plaintiff at the time of instituting a
118 condemnation case, in lieu of any other fees. There shall be no fee charged for the filing of a
119 cross-claim or setoff in any pending action. However, the fees prescribed by this subdivision shall be
120 charged upon the filing of a counterclaim or a claim impleading a third-party defendant. The fees
121 prescribed above shall be collected upon the filing of papers for the commencement of civil actions.

This subdivision shall not be applicable to cases filed in the Supreme Court of Virginia.

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

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

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

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

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

18. For all services rendered by the clerk in any court proceeding for which no specific fee is provided by law, the clerk shall charge \$10, to be paid by the party filing said papers at the time of filing; however, this subdivision shall not be applicable in a divorce cause prior to and including the entry of a decree of divorce from the bond of matrimony.

19., 20. [Repealed.]

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

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

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

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

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

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

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

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

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

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

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 be paid by the petitioner; and for the recordation of a certificate or copy thereof, as provided for in § 33.1-122, as well as for any order of the court relating thereto, the clerk shall charge the same fee as for recording a deed as provided for in this section, to be paid by the party upon whose request such

183 certificate is recorded or order is entered.

184 32. For making up, certifying and transmitting original record pursuant to the Rules of the Supreme
185 Court, including all papers necessary to be copied and other services rendered, except in cases in which
186 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,
187 or 17.1-275.9, a fee of \$20.

188 33. [Repealed.]

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

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

193 36. [Repealed.]

194 37. For recordation of certificate and registration of names of nonresident owners in accordance with
195 § 59.1-74, a fee of \$10.

196 38. For maintaining the information required under the Overhead High Voltage Line Safety Act
197 (§ 59.1-406 et seq.), the fee as prescribed in § 59.1-411.

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

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

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

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

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

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

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

210 B. In accordance with § 17.1-281, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A
211 18 if applicable, A 20, A 22, A 24, A 26, A 29 and A 31 to be designated for courthouse construction,
212 renovation or maintenance.

213 C. In accordance with § 17.1-278, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A
214 18 if applicable, A 20, A 22, A 24, A 26, A 29 and A 31 to be designated for services provided for the
215 poor, without charge, by a nonprofit legal aid program.

216 D. In accordance with § 42.1-70, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A
217 18 if applicable, A 20, A 22, A 24, A 26, A 29 and A 31 to be designated for public law libraries.

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

220 **2. That the fee increases provided for under the provisions of § 16.1-69.48:2 shall be allocated by**
221 **the Compensation Board exclusively to fund sheriffs' offices.**

222 **3. That 85 percent of the fee increases provided for under the provisions of § 17.1-275 shall be**
223 **allocated by the Compensation Board exclusively to fund sheriffs' offices; and that 15 percent of**
224 **the fee increases provided for under the provisions of § 17.1-275 shall be allocated by the**
225 **Compensation Board exclusively to fund offices of the attorneys for the Commonwealth.**