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## SENATE BILL NO. 409

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 17.1-207, 17.1-218, 17.1-229, 19.2-270.4, 19.2-310, 27-42, and 55-66.6 of the Code of Virginia and to repeal § 20-32 of the Code of Virginia, relating to duties of the clerk of the circuit court.

\_\_\_\_\_  
Patron—Vogel

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 17.1-207, 17.1-218, 17.1-229, 19.2-270.4, 19.2-310, 27-42, and 55-66.6 of the Code of Virginia are amended and reenacted as follows:

§ 17.1-207. Days of operation of clerks' offices.

A. The clerk's office of every court shall be kept open on every day except Saturday, except as provided in subsection B, and Sunday, and the days provided for in § 2.2-3300, for the transaction of business; provided that:

1. The clerk's office of the circuit court of any county or city may be closed on any day which is established as a general holiday for the employees of such county or city by a resolution duly adopted by the governing body of such county or city and approved by the judge or judges of the circuit court and filed in the office of the clerk; provided that such general holiday shall have the same force and effect as a legal holiday as set forth in subsection B of § 1-210;

2. The judge or judges of any circuit court in any county or city may authorize the clerk of such court to close the clerk's office on Christmas Eve; provided that the closing of any clerk's office as provided by this subdivision shall have the same force and effect as a legal holiday as set forth in subsection B of § 1-210;

3. The chief judge or presiding judge of any circuit court may authorize the clerk of the court to close the clerk's office on any day when the chief judge or presiding judge determines that operation of the clerk's office, under prevailing conditions, would constitute a threat to the health and safety of the clerk's office personnel or the general public. Closing of the clerk's office pursuant to this subdivision shall have the same effect as provided in subsection B of § 1-210;

4. The judge or judges of the circuit court of any county or city may authorize the clerk of such court to close the clerk's office on any day or portion of a day which the Governor declares as a holiday for state employees, or on any day or portion of a day on which the Governor authorizes state offices to be closed; provided that such closing of any clerk's office shall have the same force and effect as a legal holiday as set forth in subsection B of § 1-210.

Except for closings pursuant to subdivision 3, whenever the authorization of the judge is necessary to close a clerk's office and a court has more than one judge, the authorization of all such judges shall be necessary.

~~The judge of the circuit court of any county or city may require the clerk's office to be kept open continuously for the transaction of business during convenient hours on all the days on which it is required by this section to be kept open. The clerk's office shall be kept open for the transaction of business during convenient hours on all days on which it is required by this section to be kept open.~~

B. Nothing in this section shall be construed to prohibit the clerk, with the approval of the chief judge, to open the clerk's office on Saturdays, during such hours as the chief judge may authorize, solely for the purposes of (i) permitting examination and copying of court records, (ii) accepting applications for and granting licenses pursuant to applicable law, and (iii) recording instruments. For all other purposes, including without limitation the filing of actions at law and suits in equity and all pleadings, pleas and motions therein, such clerk's office shall be closed with the force and effect of a statutory closing as provided in subsection B of § 1-210.

§ 17.1-218. Certified lists of county, district, town and city officers, and constitutional officers; vacancies and appointments.

~~The clerk of the circuit court of each~~ Each county, incorporated town and city shall annually, by July 1, send to the Secretary of the Commonwealth a list of all county, district, incorporated town and city officers and all constitutional officers of the Commonwealth, serving in and for their respective counties, incorporated towns and cities. When a vacancy occurs in any such office the clerk locality shall notify the Secretary of the Commonwealth within ten days and shall likewise notify the Secretary of the election or appointment and qualification of any officer to fill such vacancy within ten days after

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59 the qualification of such officer. All such lists and notices sent to the Secretary of the Commonwealth  
60 shall be certified by the ~~clerk~~ *county executive or the county, town or city manager or their designee.*

61 § 17.1-229. Additional documents to be recorded in deed book.

62 All deeds, homestead deeds and leases of personal property, bills of sale, and all other contracts or  
63 liens as to personal property, which are by law required or permitted to be recorded, all mechanics'  
64 liens, all other liens not directed to be recorded elsewhere and all other writings relating to or affecting  
65 personal property which are authorized to be recorded shall, unless otherwise provided, be recorded in  
66 the deed book and shall be indexed in the general index book; *provided, however, the clerk shall only*  
67 *record writings specifically authorized by law and set out in the Code of Virginia.*

68 § 19.2-270.4. When donation, destruction, or return of exhibits received in evidence authorized.

69 A. Except as provided in § 19.2-270.4:1 and unless objection with sufficient cause is made, the trial  
70 court in any criminal case may order the donation or destruction of any or all exhibits received in  
71 evidence during the course of the trial (i) in any misdemeanor case, at any time after the expiration of  
72 the time for filing an appeal from the final judgment of the court if no appeal is taken or if an appeal is  
73 taken, at any time after exhaustion of all appellate remedies ~~and~~; (ii) in any felony case, upon notice *in*  
74 *the sentencing order or otherwise* to the attorney for the Commonwealth, the defendant at his last  
75 known address, and attorney of record for the defendant in the case, after more than one year has  
76 expired from exhaustion of all appellate remedies, or, if no appeal is taken, after more than one year  
77 from the time for seeking appellate remedies has expired; *and in the event the defendant is found not*  
78 *guilty by a court of law, the court may, upon entry of the final order, order the destruction, donation, or*  
79 *return of the exhibits;* provided, however, if a petition for writ of habeas corpus is filed within such  
80 one-year period, then such order shall not be entered until exhaustion of such habeas corpus  
81 proceedings. *Notwithstanding the foregoing, in all cases concluded prior to July 1, 2008, the notice*  
82 *requirement in this section shall not apply.* The order of donation or destruction may require that  
83 photographs be made of all exhibits ordered to be donated or destroyed and that such photographs be  
84 appropriately labeled for future identification. In addition, the order shall state the nature of the exhibit  
85 subject to donation or destruction, identify the case in which such exhibit was received and from whom  
86 such exhibit was received, if known, and the manner by which the exhibit is to be destroyed or to  
87 whom donated. *However, any money introduced into evidence, unless it is stolen from a third party,*  
88 *shall be subject to forfeiture by law-enforcement officials as otherwise provided by law, and if no*  
89 *forfeiture action is taken or if funds remain after any such forfeiture, the clerk shall escheat such funds*  
90 *as otherwise provided by law.*

91 B. Except as provided in § 19.2-270.4:1, a circuit court for good cause shown, on notice to the  
92 attorney for the Commonwealth and any attorney for a defendant in the case, may order the return of  
93 any or all exhibits to the owners thereof, notwithstanding the pendency of any appeal or petition for a  
94 writ of habeas corpus. The order may be upon such conditions as the court deems appropriate for future  
95 identification and inclusion in the record of a case subject to retrial. In addition, the owner shall  
96 acknowledge in a sworn affidavit to be filed with the record of the case, that he has retaken possession  
97 of such exhibit or exhibits.

98 C. Any photographs taken pursuant to an order of donation or destruction or an order returning  
99 exhibits to the owners shall be retained with the record in the case and, if necessary, shall be admissible  
100 in any subsequent trial of the same cause, subject to all other rules of evidence.

101 D. Upon petition of any organization which is exempt from taxation under § 501 (c) (3) of the  
102 Internal Revenue Code, the court in its sound discretion may order the donation of an exhibit to such  
103 charitable organization.

104 § 19.2-310. Transfer of prisoners to custody of Director of Department of Corrections.

105 Every person sentenced by a court to the Department of Corrections upon conviction of a felony  
106 shall be conveyed to an appropriate receiving unit operated by the Department in the manner hereinafter  
107 provided. The clerk of the court in which the person is sentenced shall forthwith transmit to the Central  
108 Criminal Records Exchange the report of dispositions required by § 19.2-390. The clerk of the court  
109 within thirty days from the date of the judgment shall forthwith transmit to the Director of the  
110 Department a certified copy or copies of the order of trial and a certified copy of the complete final  
111 order; ~~and if he fails to do so he shall forfeit \$100.~~ Such copy or copies shall contain, as nearly as  
112 ascertainable, the birth date of the person sentenced. The sheriff shall certify to the Director of the  
113 Department any jail credits to which the person to be confined is entitled at such time as that person is  
114 transferred to the custody of the Director of the Department.

115 Following receipt of the order of trial and a certified copy of the complete final order, the Director  
116 or his designee shall dispatch a correctional officer to the county or city with a warrant directed to the  
117 sheriff authorizing him to deliver the prisoner to the correctional officer whose duty it shall be to take  
118 charge of the person and convey him to an appropriate receiving unit designated by the Director or his  
119 designee. The Director or his designee shall allocate space available in the receiving unit or units by  
120 giving first priority to the transportation, as the transportation facilities of the Department may permit, of

those persons held in jails who in the opinion of the Director or his designee except as required by § 53.1-20 require immediate transportation to a receiving unit. In making such a determination of priority, the Director shall give due regard to the capacity of local as well as state correctional facilities and, to the extent feasible, shall seek to balance between local and state correctional facilities the excess of prisoners requiring detention.

§ 27-42. Definition of term "volunteer fire fighters"; Department of Fire Programs to keep record of names.

For the purposes of this article the term "volunteer fire fighters" shall include only members of any organized fire-fighting company which has in its possession and operates fire-fighting apparatus and equipment, whose members serve without pay and whose names have been duly certified by the secretary of such company as active members thereof to the clerk of the circuit court of the county or city as the case may be *Department of Fire Programs*. The respective clerks *Department* shall keep a complete and accurate record of all names so certified in a book provided by the governing body of such county or city. Names shall be added to or stricken from such record upon the certificate of the secretary of any such company that such action has been decided by his organization in due form.

§ 55-66.6. Recordation of certificate of satisfaction, etc., required when release of lien recorded.

Whenever a release of a deed of trust or other obligation shall be admitted to record in the office of the clerk of any circuit court, such clerk shall record a certificate of satisfaction or certificate of partial satisfaction, stating that such deed or other obligation is released. The fee charged by the clerk for recording such release shall be paid by the lien debtor. Such certificate shall be indexed in the name of the grantors and grantees of the instrument being released. If any clerk fails for ten days to do anything required of him by this section, he shall be liable for any damage which any person may sustain by reason of such failure and shall pay a fine of not less than \$25 nor more than \$100.

2. That § 20-32 of the Code of Virginia is repealed.