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SENATE BILL NO. 409

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice)

(Patron Prior to Substitute—Senator Vogel)

Senate Amendments in [] — February 10, 2010

A BILL to amend and reenact §§ 17.1-218, [~~17.1-229~~,] 19.2-270.4, 19.2-310, 43-17.1, 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.

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-218, [~~17.1-229~~,] 19.2-270.4, 19.2-310, 43-17.1, and 55-66.6 of the Code of Virginia are amended and reenacted as follows:

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

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

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

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

A. Except as provided in § 19.2-270.4:1 and unless objection with sufficient cause is made, the trial court in any criminal case may order the donation or destruction of any or all exhibits received in evidence during the course of the trial (i) in any misdemeanor case, at any time after the expiration of the time for filing an appeal from the final judgment of the court if no appeal is taken or if an appeal is taken, at any time after exhaustion of all appellate remedies ~~and~~; (ii) in any felony case, upon notice ~~in the sentencing order or otherwise~~ to the attorney for the Commonwealth, the defendant at his last known address, and attorney of record for the defendant in the case, after more than one year has expired from exhaustion of all appellate remedies, or, if no appeal is taken, after more than one year from the time for seeking appellate remedies has expired; ~~and in the event the defendant is found not guilty by a court of law, the court may, upon entry of the final order, order the destruction, donation, or return of the exhibits;~~ provided, however, if a petition for writ of habeas corpus is filed within such one-year period, then such order shall not be entered until exhaustion of such habeas corpus proceedings. ~~Notwithstanding the foregoing, in all cases concluded prior to July 1, 2005, the notice requirement in this section shall not apply.~~ The order of donation or destruction may require that photographs be made of all exhibits ordered to be donated or destroyed and that such photographs be appropriately labeled for future identification. In addition, the order shall state the nature of the exhibit subject to donation or destruction, identify the case in which such exhibit was received and from whom such exhibit was received, if known, and the manner by which the exhibit is to be destroyed or to whom donated. ~~However, any money introduced into evidence, unless it is stolen from a third party, shall be subject to forfeiture by law-enforcement officials as otherwise provided by law, and if no forfeiture action is taken or if funds remain after any such forfeiture, the clerk shall escheat such funds as otherwise provided by law.~~

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

C. Any photographs taken pursuant to an order of donation or destruction or an order returning

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60 exhibits to the owners shall be retained with the record in the case and, if necessary, shall be admissible
61 in any subsequent trial of the same cause, subject to all other rules of evidence.

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

65 § 19.2-310. Transfer of prisoners to custody of Director of Department of Corrections.

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

76 Following receipt of the order of trial and a certified copy of the complete final order, the Director
77 or his designee shall dispatch a correctional officer to the county or city with a warrant directed to the
78 sheriff authorizing him to deliver the prisoner to the correctional officer whose duty it shall be to take
79 charge of the person and convey him to an appropriate receiving unit designated by the Director or his
80 designee. The Director or his designee shall allocate space available in the receiving unit or units by
81 giving first priority to the transportation, as the transportation facilities of the Department may permit, of
82 those persons held in jails who in the opinion of the Director or his designee except as required by
83 § 53.1-20 require immediate transportation to a receiving unit. In making such a determination of
84 priority, the Director shall give due regard to the capacity of local as well as state correctional facilities
85 and, to the extent feasible, shall seek to balance between local and state correctional facilities the excess
86 of prisoners requiring detention.

87 § 43-17.1. Hearing on validity of lien.

88 Any party, having an interest in real property against which a lien has been filed, may, upon a
89 showing of good cause, petition the court of equity having jurisdiction wherein the building, structure,
90 other property, or railroad is located to hold a hearing to determine the validity of any perfected lien on
91 the property. After reasonable notice to the lien claimant and any party to whom the benefit of the lien
92 would inure and who has given notice as provided in § 43-18 of the Code of Virginia, the court shall
93 hold a hearing and determine the validity of the lien. If the court finds that the lien is invalid, it shall
94 forthwith order that the memorandum or notice of lien be ~~removed~~ *released* from record.

95 § 55-66.6. Recordation of certificate of satisfaction, etc., ~~required~~ when release of lien recorded.

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

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