VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 715

An Act to amend and reenact §§ 17.1-258.3:2, 17.1-293, 17.1-294, and 17.1-502 of the Code of Virginia, relating to electronic filing in civil or criminal proceedings.

[S 1369]

Approved March 26, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-258.3:2, 17.1-293, 17.1-294, and 17.1-502 of the Code of Virginia are amended and reenacted as follows:

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

A clerk of circuit court may establish a system for providing official certificates and certified records in digital form of any document maintained by the clerk. The clerk or his designated application service provider may assess an additional fee not to exceed $5 per official certificate accompanying or attesting the certified records, subject to subdivision A 8 of § 17.1-275 and to the exemptions provided in § 17.1-267. *The clerk may perform such other notarial acts as allowed under § 47.1-12.* 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 conversion services; (ii) preserving, maintaining and enhancing court records, including, but not limited to, the costs of repairs, maintenance, consulting services, service contracts, redaction of social security numbers from land or other records, and system replacements or upgrades; and (iii) improving public access to records maintained by the clerk. *The clerk of the circuit court of any jurisdiction shall be immune from suit arising from any acts or omissions relating to providing official certificates and certified records in digital form of any document maintained by the clerk pursuant to this section unless the clerk was grossly negligent or engaged in willful misconduct.*

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

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

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

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

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

E. This section shall not apply to the following:

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

2. Postings related to legitimate law-enforcement purposes;

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

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

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

6. Providing official certificates and certified records in digital form of any document maintained by the clerk pursuant to § 17.1-258.3:2; and

7. Providing secure remote access, subject to any fees charged by the clerk, to members in good standing with the Virginia State Bar and their authorized agents, pro hac vice attorneys authorized by the court for purposes of the practice of law, and such governmental agencies as authorized by the clerk. However, nothing herein shall be construed to permit any data accessed by secure remote access

to be sold or posted on any other Internet website or in any way redistributed to any third party, and the clerk reserves the discretion to deny secure remote access to ensure compliance with these provisions.

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.

§ 17.1-294. Secure remote access to land records.

A. No circuit court clerk shall provide secure remote access to any land record that does not comply with the provisions of this section and the secure remote access standards developed by the Virginia Information Technologies Agency in consultation with the circuit court clerks, the Executive Secretary of the Supreme Court, the Compensation Board, and users of land and other court records.

B. 1. Beginning July 1, 2012, any land record made available to subscribers via secure remote access may contain only the last four digits of the social security number of any party. *Nothing in this subsection shall be construed to require the clerk to reinsert the last four digits of a social security number on any land record where the redaction of the entire social security number has been completed prior to July 1, 2012.*

2. However, the original land record maintained by the clerk may contain a social security number if otherwise provided by law, but that original record shall not be made available via secure remote access unless it complies with this section.

3. Except in cases where the original record is required by law to contain a social security number, the attorney or party who prepares or submits the land record for recordation has the responsibility for ensuring that the social security number has been removed from the writing prior to the instrument's being submitted for recordation.

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

D. The clerk of the circuit court of any jurisdiction shall be immune from suit arising from any acts or omissions relating to providing secure remote access to land records pursuant to this section unless the clerk was grossly negligent or engaged in willful misconduct.

§ 17.1-502. Administrator of circuit court system.

The Executive Secretary of the Supreme Court shall be the administrator of the circuit court system, which shall include responsibility for the operation and maintenance of a case management system and financial management system, and related technology improvements, that the Executive Secretary shall deem necessary for the administration of the circuit court system. The Executive Secretary shall permit an interface with the case management system, financial management system, and related technology improvements for the purpose of providing electronic information to state agencies, upon request of any circuit court that uses automation or technology improvements provided by a private vendor or the locality. The circuit court clerk and the clerk's designated application service provider shall comply with the security and data standards established by the Executive Secretary for any such interface between a case management or financial management system operated by a circuit court clerk and the systems of the Executive Secretary. The costs of designing, implementing, and maintaining any such interface with the systems of the Executive Secretary shall be the responsibility of the circuit court clerk. Any expenses incurred within the office of the Executive Secretary, not to exceed $104,280, related to the operation and maintenance of such interfaces with the case management system and financial management system shall be reimbursed through the Technology Trust Fund established pursuant to subsection A of § 17.1-279. *Prior to incurring any costs, the Office of the Executive Secretary shall provide the circuit court clerk a written explanation and amount of the expenses for reimbursement from the Compensation Board, notify the circuit court clerk of the amount being requested for reimbursement and an explanation of the expenses incurred.* The Executive Secretary shall assist the chief judges in the performance of their administrative duties. He may employ such staff and other assistants, from state funds appropriated to him for the purpose, as may be necessary to carry out his duties, and may secure such office space as may be requisite, to be located in an appropriate place to be selected by the Executive Secretary.