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## 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.*

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Patron—Lucas

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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.

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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

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 certificate is recorded or order is entered.

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

33. [Repealed.]

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

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

36. [Repealed.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. The clerk shall assess, in addition to the fees 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, the following costs:

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

2. Any amount paid for trial transcripts;

3. Extradition costs;

4. Costs of psychiatric evaluation;

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

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

7. Any jury costs;

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

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

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

11. Any fee for testing for HIV;

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

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

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

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

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

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

B. The total amount of assessments described in subsection A of this section, including the fees 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, shall be forthwith may be docketed by the clerk as a judgment against the defendant in favor of the Commonwealth.

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

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

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

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

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

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

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

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