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SENATE BILL NO. 251

Offered January 11, 2012

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A BILL to amend and reenact §§ 8.01-446, 17.1-275, 17.1-275.5, 19.2-336, and 19.2-353.5 of the Code of Virginia, relating to fees collected by clerks of circuit courts.

Patron—Obenshain

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-446, 17.1-275, 17.1-275.5, 19.2-336, and 19.2-353.5 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-446. Clerks to keep judgment dockets; what judgments to be docketed therein.

The clerk of each court of every circuit shall keep in his office, in a well-bound book, or by microphotographic or electronic process allowed by § 17.1-240, a judgment docket, in which he shall docket, ~~without delay~~, any judgment for a specific amount of money rendered in his court, and shall likewise docket ~~without delay~~ any judgment for a specific amount of money rendered in ~~this the~~ Commonwealth by any other court of ~~this the~~ Commonwealth or federal court, when he shall be required so to do by any person interested, on such person delivering to him an authenticated legible abstract of it and also upon the request of any person interested therein, any such judgment rendered by a district court judge whose book has been filed in his office under the provisions of Title 16.1 or of which a legible abstract is delivered to him certified by the district court judge who rendered it; provided, that judgments docketed in the clerk's office of the Circuit Court of the City of Williamsburg and the County of James City shall be docketed and indexed in one book. A specific judgment for money shall state that it is a judgment for money in a specific amount in favor of a named party, against a named party, with that party's address, if known, and it shall further state the time from which the judgment bears interest. An order of restitution docketed pursuant to § 19.2-305.2 shall have the same force and effect as a specific judgment for money and shall state that it is an order of restitution in a specific amount in favor of a named party, against a named party, with that party's address, if known, and it shall further state the time from which the judgment bears interest. If the clerk determines that an abstract is not legible, the clerk shall refuse to record it and shall return it to the person who tendered the abstract for recording. *A judgment for assessments described in subsection A of § 17.1-275.5 or the fees provided for by § 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, 17.1-275.9, 17.1-275.10, 17.1-275.11, or 17.1-275.12 shall be recorded as a judgment in favor of the Commonwealth if such fees or assessments are not fully paid within 15 days of the date of sentencing by the court unless the defendant enters into an installment or deferred payment agreement under § 19.2-354.*

§ 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.

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

61 5. For issuing a marriage license, attaching certificate, administering or receiving all necessary oaths
62 or affidavits, indexing and recording, \$10. *For recording an order to celebrate the rites of marriage*
63 *pursuant to § 20-25, \$25 to be paid by the petitioner.*

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

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

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

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

82 10. In any case in which a person is convicted of a violation of any provision of Article 1
83 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk
84 shall assess a fee of \$150 for each felony conviction and each felony disposition under § 18.2-251 which
85 shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and
86 Treatment Fund.

87 11. In any case in which a person is convicted of a violation of any provision of Article 1
88 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk
89 shall assess a fee for each misdemeanor conviction and each misdemeanor disposition under § 18.2-251,
90 which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and
91 Treatment Fund as provided in § 17.1-275.8.

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

95 13. In all civil actions that include one or more claims for the award of monetary damages the clerk's
96 fee chargeable to the plaintiff shall be \$100 in cases seeking recovery not exceeding \$49,999; \$200 in
97 cases seeking recovery exceeding \$49,999, but not exceeding \$100,000; \$250 in cases seeking recovery
98 exceeding \$100,000, but not exceeding \$500,000; and \$300 in cases seeking recovery exceeding
99 \$500,000. Ten dollars of each such fee shall be apportioned to the Courts Technology Fund established
100 under § 17.1-132. A fee of \$25 shall be paid by the plaintiff at the time of instituting a condemnation
101 case, in lieu of any other fees. There shall be no fee charged for the filing of a cross-claim or setoff in
102 any pending action. However, the fees prescribed by this subdivision shall be charged upon the filing of
103 a counterclaim or a claim impleading a third-party defendant. The fees prescribed above shall be
104 collected upon the filing of papers for the commencement of civil actions. This subdivision shall not be
105 applicable to cases filed in the Supreme Court of Virginia.

106 13a. For the filing of any petition seeking court approval of a settlement where no action has yet
107 been filed, the clerk's fee, chargeable to the petitioner, shall be \$50, to be paid by the petitioner at the
108 time of filing the petition.

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

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

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

119 17. For docketing and indexing a judgment from any other court of this Commonwealth, for
120 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 (i) the filing of a cross-claim or setoff in any pending suit or (ii) the filing of a counterclaim or any other responsive pleading in any annulment, divorce, or separate maintenance proceeding. 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 *or debit* 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 *or debit* card a reasonable convenience fee *for the processing of such credit or debit card. Such convenience fee shall be deposited in the clerk's local nonreverting fund and shall not to exceed four percent of the amount paid for the transaction, or a flat fee not to exceed \$2 per transaction. Nothing herein shall be construed to prohibit the clerk from outsourcing the processing of credit and debit card transactions to a third-party private vendor engaged by the clerk.*

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 *or debit* 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.

182 36. [Repealed.]
 183 37. For recordation of certificate and registration of names of nonresident owners in accordance with
 184 § 59.1-74, a fee of \$10.
 185 38. For maintaining the information required under the Overhead High Voltage Line Safety Act
 186 (§ 59.1-406 et seq.), the fee as prescribed in § 59.1-411.
 187 39. For lodging, indexing and preserving a will in accordance with § 64.1-56, a fee of \$2.
 188 40. For filing a financing statement in accordance with § 8.9A-505, the fee shall be as prescribed
 189 under § 8.9A-525.
 190 41. For filing a termination statement in accordance with § 8.9A-513, the fee shall be as prescribed
 191 under § 8.9A-525.
 192 42. For filing assignment of security interest in accordance with § 8.9A-514, the fee shall be as
 193 prescribed under § 8.9A-525.
 194 43. For filing a petition as provided in §§ 37.2-1001 and 37.2-1013, the fee shall be \$10.
 195 44. For issuing any execution, and recording the return thereof, a fee of \$1.50.
 196 45. For the preparation and issuance of a summons for interrogation by an execution creditor, a fee
 197 of \$5. If there is no outstanding execution, and one is requested herewith, the clerk shall be allowed an
 198 additional fee of \$1.50, in accordance with subdivision A 44.
 199 B. In accordance with § 17.1-281, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A
 200 18 if applicable, A 20, A 22, A 24, A 26, A 29 and A 31 to be designated for courthouse construction,
 201 renovation or maintenance.
 202 C. In accordance with § 17.1-278, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A
 203 18 if applicable, A 20, A 22, A 24, A 26, A 29 and A 31 to be designated for services provided for the
 204 poor, without charge, by a nonprofit legal aid program.
 205 D. In accordance with § 42.1-70, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A
 206 18 if applicable, A 20, A 22, A 24, A 26, A 29 and A 31 to be designated for public law libraries.
 207 E. The provisions of this section shall control the fees charged by clerks of circuit courts for the
 208 services above described.
 209 § 17.1-275.5. Amounts to be added; judgment in favor of the Commonwealth.
 210 A. The clerk shall assess, in addition to the fees provided for by §§ 17.1-275.1 ~~through, 17.1-275.2,~~
 211 ~~17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, or § 17.1-275.9,~~ the following costs:
 212 1. Any amount paid by the Commonwealth for legal representation of the defendant;
 213 2. Any amount paid for trial transcripts;
 214 3. Extradition costs;
 215 4. Costs of psychiatric evaluation;
 216 5. Costs taxed against the defendant as appellant under Rule 5A:30 of the Rules of the Supreme
 217 Court;
 218 6. Any fee for a returned check or disallowed credit card charge assessed pursuant to subdivision A
 219 28 of § 17.1-275;
 220 7. Any jury costs;
 221 8. Any assessment made pursuant to subdivision A 10 of § 17.1-275;
 222 9. Any fees prescribed in §§ 18.2-268.8 and 46.2-341.26:8;
 223 10. Any court costs related to an ignition interlock device;
 224 11. Any fee for testing for HIV;
 225 12. Any fee for processing an individual admitted to jail as prescribed in § 15.2-1613.1;
 226 13. Any fee for courthouse security personnel as prescribed in § 53.1-120;
 227 14. Any fee for a DNA sample as prescribed in § 19.2-310.2;
 228 15. Reimbursement to the Commonwealth of medical fees as prescribed in § 19.2-165.1;
 229 16. Any fee for a local criminal justice training academy as prescribed in § 9.1-106;
 230 17. Any fee prescribed by §§ 16.1-69.48:1.01 and 17.1-275.11; and
 231 18. Any expenses charged pursuant to subsection B or F of § 19.2-187.1.
 232 B. The total amount of assessments described in subsection A ~~of this section,~~ including the fees
 233 provided for by §§ 17.1-275.1 ~~through, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, or §~~
 234 ~~17.1-275.9, and no other,~~ shall be ~~forthwith~~ docketed by the clerk as a judgment against the defendant
 235 in favor of the Commonwealth *in accordance with § 8.01-446 and the fees collected therefrom deposited*
 236 *in the clerk's nonreverting local fund.*
 237 § 19.2-336. Clerk to make up statement of whole cost, and issue execution therefor.
 238 In every criminal case the clerk of the circuit court in which the accused is found guilty or is placed
 239 on probation during deferral of the proceedings pursuant to § 16.1-278.8, 16.1-278.9, 18.2-61, 18.2-67.1,
 240 18.2-67.2, 18.2-251 or 19.2-303.2, or, if the conviction is in a district court, the clerk to which the judge
 241 thereof certifies as aforesaid, shall, as soon as may be, make up a statement of all the expenses incident
 242 to the prosecution, including such as are certified under § 19.2-335, and execution for the amount of
 243 such expenses shall be issued and proceeded with. Chapter 21 (§ 19.2-339 et seq.) ~~of this title~~ shall

244 apply thereto in like manner as if, on the day of completing the statement, there was a judgment in such
245 court in favor of the Commonwealth against the accused for such amount as a fine. However, in any
246 case in which an accused waives trial by jury, at least 10 days before trial, but the Commonwealth or
247 the court trying the case refuses to so waive, then the cost of the jury shall not be included in such
248 statement or judgment *recorded pursuant to § 17.1-275.5*.

249 § 19.2-353.3. Acceptance of checks and credit or debit cards in lieu of money; additional fee.

250 Notwithstanding the provisions of § 19.2-353, personal checks and credit *or debit* cards shall be
251 accepted in lieu of money to collect and secure all fees, fines, restitution, forfeiture, penalties and costs
252 collected for offenses tried in a district court, including motor vehicle violations, committed against the
253 Commonwealth or against any county, city or town. Notwithstanding the provisions of § 19.2-353,
254 personal checks shall be accepted in lieu of money to collect and secure all fees, fines, restitution,
255 forfeiture, penalties and costs collected for offenses tried in a circuit court, including motor vehicle
256 violations, committed against the Commonwealth or against any county, city or town. The clerk of any
257 circuit court shall not be required to but may, in his discretion, accept credit *or debit* card payment in
258 lieu of money to collect and secure all fees, including filing fees, fines, restitution, forfeitures, penalties,
259 and costs collected. The Committee on District Courts shall devise a procedure for approving and
260 accepting checks and credit *or debit* cards that shall be accepted by the district courts. Court personnel
261 shall not be held to be guarantors of the payment made in such manner and shall not be personally
262 liable for any sums uncollected. The clerk of the court, in addition to any fees, fines, restitution,
263 forfeiture, penalties or costs, may add to such payment a sum not to exceed four percent of the amount
264 paid *for the transaction, or a flat fee not to exceed \$2 per transaction*, as a reasonable convenience fee
265 for the acceptance of a credit *or debit* card.

266 If a check is returned unpaid by the financial institution on which it is drawn or notice is received
267 from the credit *or debit* card issuer that payment will not be made, for any reason, the fees, fine,
268 restitution, forfeiture, penalty or costs shall be treated as unpaid, and the court may pursue all available
269 remedies to obtain payment. The clerk of the court to whom the dishonored check or credit *or debit*
270 card was tendered may impose a fee of twenty dollars or ten percent of the value of the payment,
271 whichever is greater, in addition to the fine and costs already imposed.

272 The clerk of court may refuse acceptance of checks or credit *or debit* cards of an individual if (i) he
273 has been convicted of a violation of Chapter 6 (§ 18.2-168 et seq.) of Title 18.2 in which a check, credit
274 *or debit* card, or credit *or debit* card information was used to commit the offense, (ii) he has previously
275 tendered to the court a check which was not ultimately honored or a credit *or debit* card or credit *or*
276 *debit* card information which did not ultimately result in payment by the credit *or debit* card issuer, (iii)
277 authorization of payment is not given by the bank or credit *or debit* card issuer, (iv) the validity of the
278 check or credit *or debit* card cannot be verified, or (v) the payee of the check is other than the court.