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SENATE BILL NO. 251

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 30, 2012)

(Patron Prior to Substitute—Senator Obenshain)

A BILL to amend and reenact §§ 17.1-275, 17.1-275.5, 19.2-336, and 19.2-353.3 of the Code of Virginia, relating to fees collected by clerks of circuit courts.

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-275, 17.1-275.5, 19.2-336, and 19.2-353.3 of the Code of Virginia are amended and reenacted as follows:

§ 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 [Repealed.]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. *For recording an order to celebrate the rites of marriage pursuant to § 20-25, \$25 to be paid by the petitioner.*

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.

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

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

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

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

60 11. In any case in which a person is convicted of a violation of any provision of Article 1
61 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk
62 shall assess a fee for each misdemeanor conviction and each misdemeanor disposition under § 18.2-251,
63 which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and
64 Treatment Fund as provided in § 17.1-275.8.

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

68 13. In all civil actions that include one or more claims for the award of monetary damages the clerk's
69 fee chargeable to the plaintiff shall be \$100 in cases seeking recovery not exceeding \$49,999; \$200 in
70 cases seeking recovery exceeding \$49,999, but not exceeding \$100,000; \$250 in cases seeking recovery
71 exceeding \$100,000, but not exceeding \$500,000; and \$300 in cases seeking recovery exceeding
72 \$500,000. Ten dollars of each such fee shall be apportioned to the Courts Technology Fund established
73 under § 17.1-132. A fee of \$25 shall be paid by the plaintiff at the time of instituting a condemnation
74 case, in lieu of any other fees. There shall be no fee charged for the filing of a cross-claim or setoff in
75 any pending action. However, the fees prescribed by this subdivision shall be charged upon the filing of
76 a counterclaim or a claim impleading a third-party defendant. The fees prescribed above shall be
77 collected upon the filing of papers for the commencement of civil actions. This subdivision shall not be
78 applicable to cases filed in the Supreme Court of Virginia.

79 13a. For the filing of any petition seeking court approval of a settlement where no action has yet
80 been filed, the clerk's fee, chargeable to the petitioner, shall be \$50, to be paid by the petitioner at the
81 time of filing the petition.

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

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

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

92 17. For docketing and indexing a judgment from any other court of this Commonwealth, for
93 docketing and indexing a judgment in the new name of a judgment debtor pursuant to the provisions of
94 § 8.01-451, but not when incident to a divorce, for noting and filing the assignment of a judgment
95 pursuant to § 8.01-452, a fee of \$5; and for issuing an abstract of any recorded judgment, when proper
96 to do so, a fee of \$5; and for filing, docketing, indexing and mailing notice of a foreign judgment, a fee
97 of \$20.

98 18. For all services rendered by the clerk in any court proceeding for which no specific fee is
99 provided by law, the clerk shall charge \$10, to be paid by the party filing said papers at the time of
100 filing; however, this subdivision shall not be applicable in a divorce cause prior to and including the
101 entry of a decree of divorce from the bond of matrimony.

102 19, 20. [Repealed.]

103 21. For making the endorsements on a forthcoming bond and recording the matters relating to such
104 bond pursuant to the provisions of § 8.01-529, \$1.

105 22. For all services rendered by the clerk in any proceeding pursuant to § 57-8 or 57-15, \$10.

106 23. For preparation and issuance of a subpoena duces tecum, \$5.

107 24. For all services rendered by the clerk in matters under § 8.01-217 relating to change of name,
108 \$20; however, this subdivision shall not be applicable in cases where the change of name is incident to
109 a divorce.

110 25. For providing court records or documents on microfilm, per frame, \$0.50.

111 26. In all divorce and separate maintenance proceedings, and all civil actions that do not include one
112 or more claims for the award of monetary damages, the clerk's fee chargeable to the plaintiff shall be
113 \$60, \$10 of which shall be apportioned to the Courts Technology Fund established under § 17.1-132 to
114 be paid by the plaintiff at the time of instituting the suit, which shall include the furnishing of a duly
115 certified copy of the final decree. The fees prescribed by this subdivision shall be charged upon the
116 filing of a counterclaim or a claim impleading a third-party defendant. However, no fee shall be charged
117 for (i) the filing of a cross-claim or setoff in any pending suit or (ii) the filing of a counterclaim or any
118 other responsive pleading in any annulment, divorce, or separate maintenance proceeding. In divorce
119 cases, when there is a merger of a divorce of separation a mensa et thoro into a decree of divorce a
120 vinculo, the above mentioned fee shall include the furnishing of a duly certified copy of both such
121 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.

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.

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

183 A. The clerk shall assess, in addition to the fees provided for by §§ 17.1-275.1 through, 17.1-275.2,
184 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, or § 17.1-275.9, the following costs:

- 185 1. Any amount paid by the Commonwealth for legal representation of the defendant;
- 186 2. Any amount paid for trial transcripts;
- 187 3. Extradition costs;
- 188 4. Costs of psychiatric evaluation;
- 189 5. Costs taxed against the defendant as appellant under Rule 5A:30 of the Rules of the Supreme
190 Court;
- 191 6. Any fee for a returned check or disallowed credit card charge assessed pursuant to subdivision A
192 28 of § 17.1-275;
- 193 7. Any jury costs;
- 194 8. Any assessment made pursuant to subdivision A 10 of § 17.1-275;
- 195 9. Any fees prescribed in §§ 18.2-268.8 and 46.2-341.26:8;
- 196 10. Any court costs related to an ignition interlock device;
- 197 11. Any fee for testing for HIV;
- 198 12. Any fee for processing an individual admitted to jail as prescribed in § 15.2-1613.1;
- 199 13. Any fee for courthouse security personnel as prescribed in § 53.1-120;
- 200 14. Any fee for a DNA sample as prescribed in § 19.2-310.2;
- 201 15. Reimbursement to the Commonwealth of medical fees as prescribed in § 19.2-165.1;
- 202 16. Any fee for a local criminal justice training academy as prescribed in § 9.1-106;
- 203 17. Any fee prescribed by §§ 16.1-69.48:1.01 and 17.1-275.11; and
- 204 18. Any expenses charged pursuant to subsection B or F of § 19.2-187.1.

205 B. The total amount of assessments described in subsection A of this section, including the fees
206 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 §
207 17.1-275.9, and no other, shall be forthwith docketed by the clerk as a judgment against the defendant
208 in favor of the Commonwealth in accordance with § 8.01-446.

209 § 19.2-336. Clerk to make up statement of whole cost, and issue execution therefor.

210 In every criminal case the clerk of the circuit court in which the accused is found guilty or is placed
211 on probation during deferral of the proceedings pursuant to § 16.1-278.8, 16.1-278.9, 18.2-61, 18.2-67.1,
212 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
213 thereof certifies as aforesaid, shall, as soon as may be, make up a statement of all the expenses incident
214 to the prosecution, including such as are certified under § 19.2-335, and execution for the amount of
215 such expenses shall be issued and proceeded with. Chapter 21 (§ 19.2-339 et seq.) of this title shall
216 apply thereto in like manner as if, on the day of completing the statement, there was a judgment in such
217 court in favor of the Commonwealth against the accused for such amount as a fine. However, in any
218 case in which an accused waives trial by jury, at least 10 days before trial, but the Commonwealth or
219 the court trying the case refuses to so waive, then the cost of the jury shall not be included in such
220 statement or judgment recorded pursuant to § 17.1-275.5.

221 § 19.2-353.3. Acceptance of checks and credit or debit cards in lieu of money; additional fee.

222 Notwithstanding the provisions of § 19.2-353, personal checks and credit or debit cards shall be
223 accepted in lieu of money to collect and secure all fees, fines, restitution, forfeiture, penalties and costs
224 collected for offenses tried in a district court, including motor vehicle violations, committed against the
225 Commonwealth or against any county, city or town. Notwithstanding the provisions of § 19.2-353,
226 personal checks shall be accepted in lieu of money to collect and secure all fees, fines, restitution,
227 forfeiture, penalties and costs collected for offenses tried in a circuit court, including motor vehicle
228 violations, committed against the Commonwealth or against any county, city or town. The clerk of any
229 circuit court shall not be required to but may, in his discretion, accept credit or debit card payment in
230 lieu of money to collect and secure all fees, including filing fees, fines, restitution, forfeitures, penalties,
231 and costs collected. The Committee on District Courts shall devise a procedure for approving and
232 accepting checks and credit or debit cards that shall be accepted by the district courts. Court personnel
233 shall not be held to be guarantors of the payment made in such manner and shall not be personally
234 liable for any sums uncollected. The clerk of the court, in addition to any fees, fines, restitution,
235 forfeiture, penalties or costs, may add to such payment a sum not to exceed four percent of the amount
236 paid for the transaction, or a flat fee not to exceed \$2 per transaction, as a reasonable convenience fee
237 for the acceptance of a credit or debit card.

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

244 The clerk of court may refuse acceptance of checks or credit or debit cards of an individual if (i) he

245 has been convicted of a violation of Chapter 6 (§ 18.2-168 et seq.) of Title 18.2 in which a check, credit
 246 *or debit* card, or credit *or debit* card information was used to commit the offense, (ii) he has previously
 247 tendered to the court a check which was not ultimately honored or a credit *or debit* card or credit *or*
 248 *debit* card information which did not ultimately result in payment by the credit *or debit* card issuer, (iii)
 249 authorization of payment is not given by the bank or credit *or debit* card issuer, (iv) the validity of the
 250 check or credit *or debit* card cannot be verified, or (v) the payee of the check is other than the court.