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HOUSE BILL NO. 1715

Offered January 9, 2013

Prefiled January 8, 2013

A BILL to amend and reenact §§ 17.1-208, 17.1-258.3 through 17.1-258.4, 17.1-276, 17.1-292, 17.1-293, and 17.1-295 of the Code of Virginia, relating to clerks of circuit courts; electronic filing and records; remote access.

Patron—Iaquinto

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-208, 17.1-258.3 through 17.1-258.4, 17.1-276, 17.1-292, 17.1-293, and 17.1-295 of the Code of Virginia are amended and reenacted as follows:

§ 17.1-208. Records, etc., open to inspection; copies; exception.

Except as otherwise provided by law, any records and papers of every circuit court that are maintained by the clerk of the circuit court shall be open to inspection by any person and the clerk shall, when requested, furnish copies thereof *subject to any fee charged by the clerk pursuant to § 17.1-275*, except in cases in which it is otherwise specially provided *by statute*. The certificate of the clerk to such copies shall, if the paper copied be recorded in a bound volume, contain the name and number of the volume and the page or folio at which the recordation of the paper begins, *or the instrument number as applicable*, and *the clerk may charge a fee therefor pursuant to § 17.1-275. The certificate of the clerk to such copies may be provided electronically subject to the provisions of § 17.1-258.3:2. Such electronic certificate may reference an instrument number, bound volume, or other case number, but is not required to do so.* No person shall be permitted to use the clerk's office for the purpose of making copies of records in such manner, or to such extent, as will, *in the determination of the clerk*, interfere with the business of the office or with its reasonable use by the general public.

§ 17.1-258.3. Electronic filing in civil or criminal proceedings.

Any clerk of circuit court may establish and operate a system for electronic filing in civil or criminal proceedings that shall be governed by the Rules of the Supreme Court of Virginia. The circuit court clerk may require each person whom the clerk authorizes to file documents electronically *to provide proof of identity to the clerk and to enter into an agreement specifying the electronic filing procedures to be followed, including, but not limited to, security procedures, as defined in the Uniform Electronic Transactions Act (§ 59.1-479 et seq.), for transmitting signed or notarized documents. The clerk may charge copy fees per page, as provided in subdivision A 8 of § 17.1-275, and obtain reimbursement for fees paid by subscribers to its designated application service providers for the technology systems used to operate electronic filing in civil and criminal cases in the clerk's office. The fees and reimbursements collected shall be deposited by the clerk into the clerk's nonreverting local fund to be used to cover operational expenses as defined in § 17.1-295. Nothing herein shall be construed to prevent the clerk from entering into agreements with designated application service providers to provide all or part of the network or system for electronic filing of civil or criminal records as provided herein. Further, nothing herein shall be construed to require the electronic filing of any civil or criminal record, and such records may continue to be filed in paper form.*

§ 17.1-258.3:1. Electronic filing of land records.

A clerk of a circuit court may provide a network or system for electronic filing of land records in accordance with the Uniform Real Property Electronic Recording Act (§ 55-142.10 et seq.) and the provisions of Article 2.1 (§ 55-66.8 et seq.) of Chapter 4 of Title 55 regarding the satisfaction of mortgages. The clerk may charge a fee to be assessed for each instrument recorded electronically in an amount not to exceed \$5 per document. 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 *as defined in § 17.1-295. 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, including locating technology in an offsite facility for such purposes or for the implementation of a disaster recovery plan. The clerk may require each filer to provide proof of identity to the clerk.* The clerk shall enter into an electronic filing agreement with each filer in accordance with Virginia Real Property Electronic Recording Standards

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59 established by the Virginia Information Technologies Agency. Nothing herein shall be construed to
60 prevent the clerk from entering into agreements with designated application service providers to provide
61 all or part of the network or system for electronic filing of land records as provided herein. *Further,*
62 *nothing herein shall be construed to require the electronic filing of any land record, and such records*
63 *may continue to be filed in paper form.*

64 **§ 17.1-258.3:2. Official certificates and certified records in digital form.**

65 A clerk of circuit court may establish a system for providing official certificates and certified records
66 in digital form of any document maintained by the clerk. *The clerk may require any person to provide*
67 *proof of identity to the clerk in order to obtain access to such records.* The clerk or his designated
68 application service provider may assess an additional fee not to exceed \$5 per official certificate
69 accompanying or attesting the certified records, subject to subdivision A 8 of § 17.1-275 and to the
70 exemptions provided in § 17.1-267. The clerk may perform such other notarial acts as allowed under
71 § 47.1-12. The fee shall be paid to the clerk's office and deposited by the clerk into the clerk's
72 nonreverting local fund to be used to cover operational expenses *as defined in § 17.1-295.* ~~Operational~~
73 ~~expenses shall include, but not be limited to, (i) computer support, maintenance, enhancements,~~
74 ~~upgrades, and replacements and office automation and information technology equipment including~~
75 ~~software and conversion services; (ii) preserving, maintaining and enhancing court records, including,~~
76 ~~but not limited to, the costs of repairs, maintenance, consulting services, service contracts, redaction of~~
77 ~~social security numbers from land or other records, and system replacements or upgrades; and (iii)~~
78 ~~improving public access to records maintained by the clerk~~ *Nothing herein shall be construed to require*
79 *any person to obtain an electronic certificate of any record maintained by the clerk, and such record*
80 *may continue to be obtained in paper form.* The clerk of the circuit court of any jurisdiction shall be
81 immune from suit arising from any acts or omissions relating to providing official certificates and
82 certified records in digital form of any document maintained by the clerk pursuant to this section unless
83 the clerk was grossly negligent or engaged in willful misconduct.

84 **§ 17.1-258.4. Signature; when effective as original; notarization; seal.**

85 A. If the electronically filed document contains an electronic signature pursuant to the Uniform
86 Electronic Transactions Act (§ 59.1-479 et seq.), any statutory requirement for original signature shall be
87 deemed to be satisfied. *An electronic signature that is capable of independent verification and renders*
88 *any subsequent changes or modifications to the electronic document evident satisfies such statutory*
89 *requirements.*

90 B. Any statutory requirement for a document to be notarized shall be deemed satisfied by the
91 appropriately executed electronic signature of such notary pursuant to the Virginia Notary Act (§ 47.1-1
92 et seq.).

93 C. When a seal or stamp is required to be affixed by any court or clerk on a document, the
94 attachment of an official electronic seal or official electronic stamp to the electronic document is
95 sufficient. "Official electronic seal" and "official electronic stamp" mean an electronic image of a seal or
96 stamp, respectively, of the court or clerk, that is produced by software applications authorized by the
97 clerk that are protected by system credentials to which only the clerk or persons authorized by the clerk
98 have access.

99 **§ 17.1-276. Fee allowed for providing secure remote access to land records.**

100 A. A clerk of the circuit court who provides secure remote access to land records pursuant to
101 § 17.1-294 may charge a fee as provided in this section established by the clerk to cover the operational
102 expenses. ~~Operational expenses shall include, but not be limited to, (i) computer support, maintenance,~~
103 ~~enhancements, upgrades, and replacements and office automation and information technology equipment~~
104 ~~including software and conversion services; (ii) preserving, maintaining, and enhancing court records,~~
105 ~~including, but not limited to, the costs of repairs, maintenance, consulting services, service contracts,~~
106 ~~redaction of social security numbers from land or other records, and system replacements or upgrades;~~
107 ~~and (iii) improving public access to records maintained by the clerk, including locating technology in an~~
108 ~~offsite facility for such purposes or for the implementation of a disaster recovery plan.~~ *A The fee shall*
109 *be paid to the clerk's office and deposited by the clerk into the clerk's nonreverting local fund to be*
110 *used to cover operational expenses as defined in § 17.1-295. The clerk may charge a flat clerk's fee*
111 *may to be assessed for each subscriber, as defined in § 17.1-295, in an amount not to exceed \$50 per*
112 *month and a separate fee per image downloaded in an amount not to exceed the fee provided in*
113 *subdivision A 8 of § 17.1-275. The fee clerk's fees shall be used to cover operational expenses as*
114 *defined in § 17.1-295. The circuit court clerk shall enter into an agreement with each person whom the*
115 *clerk authorizes to have remote access, in accordance with the security standards established by the*
116 *Virginia Information Technologies Agency.*

117 The Office of the Attorney General, the Division of Debt Collection, the Department of
118 Transportation, the Virginia Outdoors Foundation, and the Department of Rail and Public Transportation
119 shall be exempt from paying any fee for remote access to land records. If any clerk contracts with an
120 outside vendor to provide remote access to land records to subscribers, such contract shall contain a

provision exempting the Office of the Attorney General, the Division of Debt Collection, the Department of Transportation, the Virginia Outdoors Foundation, and the Department of Rail and Public Transportation from paying any access or subscription fee.

B. The clerk of the Circuit Court of Prince William County may establish a program under which the clerk assesses a reasonable convenience fee that shall not exceed \$2 per transaction for remote access to land records and a separate fee per image downloaded in an amount not to exceed the fee provided in subdivision A 8 of § 17.1-275.

C. *Nothing herein shall be construed to require the use by the general public of the secure remote access to land records made available by the clerk, and such records may continue to be accessed in person in the clerk's office.*

§ 17.1-292. Applicability; definitions.

A. The provisions of § 17.1-293 of this article shall apply to clerks of the courts of record as defined in § 1-212 and courts not of record as defined in § 16.1-69.5.

B. As used in this article:

"Court records" means any record maintained by the clerk in a civil or criminal proceeding in the court.

"Internet" means the international computer network of interoperable packet-switched data networks.

"Land records" means any writing authorized by law to be recorded on paper or in electronic format that the clerk records affecting title to real property, including but not limited to instruments, orders, or any other writings recorded under this title, Article 5 (§ 8.01-446 et seq.) of Chapter 17 of Title 8.01, Title 8.9A and Chapter 6 (§ 55-106 et seq.) of Title 55.

§ 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, 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;

5. Providing secure remote access to any person, his counsel, or staff which counsel directly supervises 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 to *nonconfidential court records*, 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.

F. Nothing in this section shall prohibit the Supreme Court or any other court clerk 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

182 already existing in statutory or common law, or to affect any cause of action accruing prior to July 1,
183 2005.

184 H. Nothing in this section shall be construed to permit any data accessed by secure remote access to
185 be sold or posted on any other website or in any way redistributed to any third party, and the clerk, in
186 his discretion, may deny secure remote access to ensure compliance with these provisions. However, the
187 data accessed by secure remote access may be included in products or services provided to a third party
188 of the subscriber provided that (i) such data is not made available to the general public and (ii) the
189 subscriber maintains administrative, technical, and security safeguards to protect the confidentiality,
190 integrity, and limited availability of the data.

191 **§ 17.1-295. Definitions.**

192 As used in this title:

193 *"Confidential court records" means any civil or criminal record maintained by a clerk of the circuit*
194 *court designated by this Code as confidential or any such record sealed pursuant to court order.*

195 *"Electronic filing of court records" means the networks or systems maintained by a clerk of the*
196 *circuit court, or the clerk's designated application service providers, for the submittal of instruments for*
197 *electronic filing of court records in accordance with this title, the Rules of the Supreme Court of*
198 *Virginia, and the secure remote access standards developed by the Virginia Information Technologies*
199 *Agency.*

200 *"Electronic recording of land records" means the networks or systems maintained by a clerk of the*
201 *circuit court, or the clerk's designated application ~~services~~ service providers, for the submittal of*
202 *instruments for electronic filing of land records in accordance with the Uniform Real Property Electronic*
203 *Recording Act (§ 55-142.10 et seq.) and, the provisions of Article 2.1 (§ 55-66.8 et seq.) of Chapter 4 of*
204 *Title 55 regarding the satisfaction of mortgages, and the provisions of this title.*

205 *"Operational expenses" means expenses of the clerk of court used to maintain the clerk's office and*
206 *includes (i) computer support, maintenance, enhancements, upgrades, and replacements and office*
207 *automation and information technology equipment, including software and conversion services; (ii)*
208 *preserving, maintaining, and enhancing court records, including the costs of repairs, maintenance,*
209 *consulting services, service contracts, redaction of social security numbers from certain records, and*
210 *system replacements or upgrades; and (iii) improving public access to records maintained by the clerk,*
211 *including locating technology in an offsite facility for such purposes or for implementation of a disaster*
212 *recovery plan.*

213 *"Public access" means that the clerk of the circuit court has made available to subscribers that are*
214 *other than governmental agencies, secure remote access to land records maintained by the clerk in*
215 *accordance with § 17.1-294.*

216 *"Secure remote access to court records" means public access by electronic means on a network or*
217 *system to land records maintained by the clerk of the circuit court or the clerk's designated application*
218 *service providers, in compliance with this title, the Rules of the Supreme Court of Virginia, and the*
219 *secure remote access standards developed by the Virginia Information Technologies Agency.*

220 *"Secure remote access to land records" means public access by electronic means on a network or*
221 *system to land records maintained by the clerk of the circuit court or the clerk's designated application*
222 *service providers, in compliance with the Secure Remote Access Standards developed by the Virginia*
223 *Information Technologies Agency.*

224 *"Subscriber" means any person who has entered into a subscriber agreement with the clerk of the*
225 *circuit court authorizing the subscriber to have secure remote access to land records or secure remote*
226 *access to court records maintained by the clerk or the clerk's designated application ~~services~~ service*
227 *providers. If the subscriber is an entity with more than one person who will use the network or system*
228 *to access land records maintained by the clerk, or the clerk's designated application ~~services~~ service*
229 *providers, each individual user shall execute a subscriber agreement and obtain a separate "user id" and*
230 *"password" from the clerk. The subscriber is responsible for the fees due under this title and the proper*
231 *use of the secure remote access system pursuant to the subscriber agreement, applicable Virginia law,*
232 *and Secure Remote Access Standards developed by the Virginia Information Technologies Agency.*