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**HOUSE BILL NO. 1196**

Offered January 16, 2014

*A BILL to amend and reenact §§ 17.1-123, 18.2-374.1:1, 19.2-165, 27-42, 55-142.3, 64.2-505, and 64.2-508 of the Code of Virginia, relating to clerks offices; recordation.*

Patron—Cline

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 17.1-123, 18.2-374.1:1, 19.2-165, 27-42, 55-142.3, 64.2-505, and 64.2-508 of the Code of Virginia are amended and reenacted as follows:**

**§ 17.1-123. How orders are recorded and signed.**

A. All orders that make up each day's proceedings of every circuit court shall be recorded by the clerk in a book known as the order book. Orders that make up each day's proceedings that have been recorded in the order book shall be deemed ~~authenticated~~ *the official record pursuant to § 8.01-389* when (i) the judge's signature is shown in the order, (ii) the judge's signature is shown in the order book, or (iii) an order is recorded in the order book on the last day of each term showing the signature of each judge presiding during the term.

B. If a judge dies, retires or resigns before orders recorded in the order book have been authenticated, the orders shall have the same force and effect and shall be deemed authenticated when the signature of another judge of the same circuit court or the signature of the judge appointed to fill the vacancy or to preside over the court until the vacancy is filled is authenticated as provided in subsection A.

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B. If a judge dies, retires or resigns before orders recorded in the order book have been authenticated, the orders shall have the same force and effect and shall be deemed authenticated when the signature of another judge of the same circuit court or the signature of the judge appointed to fill the vacancy or to preside over the court until the vacancy is filled is authenticated as provided in subsection A.

**§ 18.2-374.1:1. Possession, reproduction, distribution, solicitation, and facilitation of child pornography; penalty.**

A. Any person who knowingly possesses child pornography is guilty of a Class 6 felony.

B. Any person who commits a second or subsequent violation of subsection A is guilty of a Class 5 felony.

C. Any person who (i) reproduces by any means, including by computer, sells, gives away, distributes, electronically transmits, displays with lascivious intent, purchases, or possesses with intent to sell, give away, distribute, transmit, or display child pornography with lascivious intent or (ii) commands, entreats, or otherwise attempts to persuade another person to send, submit, transfer or provide to him any child pornography in order to gain entry into a group, association, or assembly of persons engaged in trading or sharing child pornography shall be punished by not less than five years nor more than 20 years in a state correctional facility. Any person who commits a second or subsequent violation under this subsection shall be punished by a term of imprisonment of not less than five years nor more than 20 years in a state correctional facility, five years of which shall be a mandatory minimum term of imprisonment. The mandatory minimum terms of imprisonment prescribed for violations of this section shall be served consecutively with any other sentence.

D. Any person who intentionally operates an Internet website for the purpose of facilitating the payment for access to child pornography is guilty of a Class 4 felony.

E. All child pornography shall be subject to lawful seizure and forfeiture pursuant to § 19.2-386.31.

F. For purposes of this section it may be inferred by text, title or appearance that a person who is depicted as or presents the appearance of being less than 18 years of age in sexually explicit visual material is less than 18 years of age.

G. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act occurs or where any child pornography is produced, reproduced, found, stored, received, or possessed in

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59 violation of this section.

60 H. The provisions of this section shall not apply to any such material that is possessed for a bona  
61 fide medical, scientific, governmental, law-enforcement, or judicial purpose by a physician, psychologist,  
62 scientist, attorney, employee of a law-enforcement agency, ~~or~~ judge, *or clerk* who possesses such  
63 material in the course of conducting his professional duties as such.

64 **§ 19.2-165. Recording evidence and incidents of trial in felony cases; cost of recording; cost of**  
65 **transcripts; certified transcript deemed prima facie correct; request for copy of transcript.**

66 In all felony cases, the court or judge trying the case shall by order entered of record provide for the  
67 recording verbatim of the evidence and incidents of trial either by a court reporter or by mechanical or  
68 electronic devices approved by the court. The expense of reporting or recording the trial of criminal  
69 cases shall be paid by the Commonwealth out of the appropriation for criminal charges, upon approval  
70 of the trial judge. However, if the defendant is convicted, the Commonwealth shall be entitled to receive  
71 the amount allocated to the court reporter fund under the fixed felony fee. Localities that maintain  
72 mechanical or electronic devices for this purpose shall be entitled to retain their reasonable expenses  
73 attributable to the cost of operating and maintaining such equipment. *The clerk shall receive the*  
74 *evidence at the time of admission of such evidence by the court and shall maintain control over such*  
75 *evidence until the time such evidence is transferred on appeal, or destroyed or returned in accordance*  
76 *with law.*

77 In all felony cases where it appears to the court from the affidavit of the defendant and other  
78 evidence that the defendant intends to seek an appeal and is financially unable to pay such costs or to  
79 bear the expense of a copy of the transcript of the evidence for an appeal, the trial court shall, upon the  
80 motion of counsel for the defendant, order the evidence transcribed for such appeal and all costs therefor  
81 paid by the Commonwealth out of the appropriation for criminal charges. If the conviction is not  
82 reversed, all costs paid by the Commonwealth, under the provisions hereof, shall be assessed against the  
83 defendant.

84 The reporter or other individual designated to report and record the trial shall file the original  
85 shorthand notes or other original records with the clerk of the circuit court who shall preserve them in  
86 the public records of the court for not less than five years if an appeal was taken and a transcript was  
87 prepared, or ten years if no appeal was taken. The transcript in any case certified by the reporter or  
88 other individual designated to report and record the trial shall be deemed prima facie a correct statement  
89 of the evidence and incidents of trial.

90 Upon the request of any counsel of record, or of any party not represented by counsel, and upon  
91 payment of the reasonable cost thereof, the court reporter covering any proceeding shall provide the  
92 requesting party with a copy of the transcript of such proceeding or any requested portion thereof.

93 The court shall not direct the court reporter to cease recording any portion of the proceeding without  
94 the consent of all parties or of their counsel of record.

95 The administration of this section shall be under the direction of the Supreme Court of Virginia.

96 **§ 27-42. Definition of term "volunteer fire fighters."**

97 For the purposes of this article, the term "volunteer fire fighters" shall include only members of any  
98 organized fire-fighting company which has in its possession and operates fire-fighting apparatus and  
99 equipment, whose members serve without pay and whose names are maintained on a list kept by the  
100 secretary of such company. It shall be the responsibility of the secretary of such company *or the*  
101 *secretary's designee* to (i) file the list with the office of the clerk of the circuit court where such  
102 company is located, (ii) keep the list of such members up to date, and (iii) file the updated list with the  
103 clerk in a timely manner. The clerk shall not be responsible to obtain the list or an updated list from the  
104 secretary of the fire-fighting company if the list is not filed with the clerk.

105 **§ 55-142.3. Duties of filing officers.**

106 A. If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any  
107 certificate described in subsection B is presented to the filing officer and

108 1. He is the clerk of the State Corporation Commission, he shall cause the notice to be marked, held  
109 and indexed in accordance with the provisions of § 8.9A-519 as if the notice were a financing statement  
110 within the meaning of that Code; or

111 2. He is any other officer described in § 55-142.1, he shall endorse thereon his identification and the  
112 date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing  
113 the name and address of the person named in the notice, the date and time of receipt, the serial number  
114 of the district director in the case of tax liens, ~~the title and address of the official or entity certifying the~~  
115 ~~lien,~~ and the total amount appearing on the notice of lien, and shall index and record the same where  
116 judgments are indexed and recorded.

117 B. If a certificate of release, nonattachment, discharge or subordination of any lien is presented to the  
118 clerk of the State Corporation Commission for filing he shall:

119 1. Cause a certificate of release or nonattachment to be marked, held and indexed as if the certificate  
120 were a termination statement within the meaning of § 8.9A-513, except that the notice of lien to which

the certificate relates shall not be removed from the files; and

2. Cause a certificate of discharge or subordination to be held, marked and indexed as if the certificate were a release of collateral within the meaning of § 8.9A-512.

C. If a refiled notice of federal lien referred to in subsection A or any of the certificates or notices referred to in subsection B is presented for filing to any other filing officer specified in § 55-142.1, he shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in any alphabetical lien index on the line where the original notice of lien is entered.

D. Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed under this article, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is one dollar. Upon request the filing officer shall furnish a copy of any notice of federal tax lien or notice or certificate affecting a federal lien for a fee of fifty cents per page.

**§ 64.2-505. When security not required.**

A. The court or clerk shall require a personal representative to furnish security. However, the court or clerk shall not require a personal representative to furnish security if:

1. All distributees of a decedent's estate or all beneficiaries under the decedent's will are personal representatives of that decedent's estate, whether serving alone or with others who are not distributees or beneficiaries; however, if all personal representatives of a testate decedent are entitled to file a statement in lieu of an accounting under § 64.2-1314, the security shall be required only upon the portion of their bond given in connection with the property passing to beneficiaries who are not personal representatives; or

2. The will waives security of an executor nominated therein.

B. Notwithstanding subsection A, upon the motion of a legatee, devisee, or distributee of an estate, or any person who has a pecuniary interest in an estate, the court *or clerk* may require that the personal representative furnish security. A copy of such motion shall be served upon the personal representative. The court shall conduct a hearing on the motion and may require the personal representative to furnish security in an amount it deems sufficient and may award the movant reasonable attorney fees and costs which shall be paid out of the estate.

C. This section shall be deemed to permit qualification without security where the personal representative is the only distributee or only beneficiary by virtue of one or more instruments of disclaimer filed prior to, or at the time of, such personal representative's qualification.

**§ 64.2-508. Written notice of probate, qualification, and entitlement to copies of inventories, accounts, and reports to be provided to certain parties.**

A. Except as otherwise provided in this section, a personal representative of a decedent's estate or a proponent of a decedent's will when there is no qualification shall provide written notice of qualification or probate, and notice of entitlement to copies of wills, inventories, accounts, and reports, to the following persons:

1. The surviving spouse of the decedent, if any;
2. All heirs at law of the decedent, whether or not there is a will;
3. All living and ascertained beneficiaries under the will of the decedent, including those who may take under § 64.2-418, and beneficiaries of any trust created by the will; and
4. All living and ascertained beneficiaries under any will of the decedent previously probated in the same court.

B. Notice under subsection A need not be provided (i) when the known assets passing under the will or by intestacy do not exceed ~~\$5,000~~ \$15,000 or (ii) to the following persons:

1. A personal representative or proponent of the will;
2. Any person who has signed a waiver of right to receive notice;
3. Any person to whom a summons has been issued pursuant to § 64.2-446;
4. Any person who is the subject of a conservatorship, guardianship, or committeehip, if notice is provided to his conservator, guardian, or committee;
5. Any beneficiary of a trust, other than a trust created by the decedent's will, if notice is provided to the trustee of the trust;
6. Any heir or beneficiary who survived the decedent but is deceased at the time of qualification or probate, and such person's successors in interest, if notice is provided to such person's personal representative;
7. Any minor for whom no guardian has been appointed, if notice is provided to his parent or person in loco parentis;
8. Any beneficiary of a pecuniary bequest or of a bequest of tangible personal property, provided in either case the beneficiary is not an heir at law and the value of the bequest is not in excess of \$5,000

182 \$15,000; and

183 9. Any unborn or unascertained persons.

184 C. The notice shall include the following information:

185 1. The name and date of death of the decedent;

186 2. The name, address, and telephone number of a personal representative or a proponent of a will;

187 3. The mailing address of the clerk of the court in which the personal representative qualified or the  
188 will was probated;

189 4. A statement as follows: "This notice does not mean that you will receive any money or property";

190 5. A statement as follows: "If personal representatives qualified on this estate, they are required by  
191 law to file an inventory with the commissioner of accounts within four months after they qualify in the  
192 clerk's office, to file an account within 16 months of their qualification, and to file additional accounts  
193 within 16 months from the date of their last account period until the estate is settled. If you make  
194 written request therefor to the personal representatives, they must mail copies of these documents (not  
195 including any supporting vouchers, but including a copy of the decedent's will) to you at the same time  
196 the inventory or account is filed with the commissioner of accounts unless (i) you would take only as an  
197 heir at law in a case where all of the decedent's probate estate is disposed of by will or (ii) your gift has  
198 been satisfied in full before the time of such filing. Your written request may be made at any time; it  
199 may relate to one specific filing or to all filings to be made by the personal representative, but it will  
200 not be effective for filings made prior to its receipt by a personal representative. A copy of your request  
201 may be sent to the commissioner of accounts with whom the filings will be made. After the  
202 commissioner of accounts has completed work on an account filed by a personal representative, the  
203 commissioner files it and a report thereon in the clerk's office of the court wherein the personal  
204 representative qualified. If you make written request therefor to the commissioner before this filing, the  
205 commissioner must mail a copy of this report and any attachments (excluding the account) to you on or  
206 before the date that they are filed in the clerk's office"; and

207 6. The mailing address of the commissioner of accounts with whom the inventory and accounts must  
208 be filed by the personal representatives, if they are required.

209 D. Within 30 days after the date of qualification or admission of the will to probate, a personal  
210 representative or proponent of the will shall forward notice by delivery or by first-class mail, postage  
211 prepaid, to the persons entitled to notice at their last known address. If the personal representative or  
212 proponent does not determine that the assets of the decedent passing under the will or by intestacy  
213 exceed ~~\$5,000~~ \$15,000 until after the date of the qualification or admission of the will to probate, notice  
214 shall be forwarded to the persons entitled thereto within 30 days after such determination.

215 E. Failure to give the notice required by this section shall not (i) affect the validity of the probate of  
216 a decedent's will or (ii) render any person required to give notice, who has acted in good faith, liable to  
217 any person entitled to receive notice. In determining the limitation period for any rights that may  
218 commence upon or accrue by reason of such probate or qualification in favor of any entitled person, the  
219 time that elapses from the date that notice should have been given to the date that notice is given shall  
220 not be counted, unless the person required to give notice could not determine the name and address of  
221 the entitled person after the exercise of reasonable diligence.

222 F. The personal representative or proponent of the will shall record within four months in the clerk's  
223 office where the will is recorded an affidavit stating (i) the names and addresses of the persons to whom  
224 he has mailed or delivered notice and when the notice was mailed or delivered to each or (ii) that no  
225 notice was required to be given to any person. The commissioner of accounts shall not approve any  
226 settlement filed by a personal representative until the affidavit described in this subsection has been  
227 recorded. If the personal representative of an estate or the proponent of a will is unable to determine the  
228 name and address of any person to whom notice is required after the exercise of reasonable diligence, a  
229 statement to that effect in the required affidavit shall be sufficient for purposes of this subsection.  
230 Notwithstanding the foregoing provisions, any person having an interest in an estate may give the notice  
231 required by this section and record the affidavit described in this subsection. If this subsection has not  
232 been complied with within four months after qualification, the commissioner of accounts shall issue,  
233 through the sheriff or other proper officer, a summons to such fiduciary requiring him to comply, and if  
234 the fiduciary does not comply, the commissioner shall enforce the filing of the affidavit in the manner  
235 set forth in § 64.2-1215.

236 G. The form of the notice to be given pursuant to this section, which shall contain appropriate  
237 instructions regarding its use, shall be provided to each clerk of the circuit court by the Office of the  
238 Executive Secretary of the Supreme Court and each clerk shall provide copies of such form to the  
239 proponents of a will or those qualifying on an estate.