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HOUSE BILL NO. 1780

Offered January 14, 2015

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A BILL to amend and reenact §§ 1-211.1, 8.01-217, 8.01-453, 8.01-454, 64.2-449, and 64.2-505 of the Code of Virginia, relating to circuit court clerk responsibilities.

Patron—Leftwich

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 1-211.1, 8.01-217, 8.01-453, 8.01-454, 64.2-449, and 64.2-505 of the Code of Virginia are amended and reenacted as follows:

§ 1-211.1. Courthouse; posting of notices.

If any notice, summons, order, or other official document of any type is required to be posted on or at the front door of a courthouse or on a public bulletin board at a courthouse, it shall constitute compliance with this requirement if the notice, summons, order, or other official document is posted with other such documents ~~either on the public government website of the locality served by the court~~ where such notice, summons, order or other official document is posted or at or near the principal public entrance to the courthouse in a location that is conspicuous to the public and approved by the chief judge of the circuit in which the courthouse is situated, or both. *The requirement to post any notice, summons, order, or other official document of any type is satisfied if such notice, summons, order, or other official document is posted on the public government website of the locality served by the court or the website of the circuit court clerk.*

§ 8.01-217. How name of person may be changed.

A. Any person desiring to change his own name, or that of his child or ward, may apply therefor to the circuit court of the county or city in which the person whose name is to be changed resides, or if no place of abode exists, such person may apply to any circuit court which shall consider such application if it finds that good cause exists therefor under the circumstances alleged. An incarcerated person may apply to the circuit court of the county or city in which such person is incarcerated. In case of a minor who has no living parent or guardian, the application may be made by his next friend. In case of a minor who has both parents living, the parent who does not join in the application shall be served with reasonable notice of the application pursuant to § 8.01-296 and, should such parent object to the change of name, a hearing shall be held to determine whether the change of name is in the best interest of the minor. It shall not be necessary to effect service upon any parent who files an answer to the application. If, after application is made on behalf of a minor and an ex parte hearing is held thereon, the court finds by clear and convincing evidence that such notice would present a serious threat to the health and safety of the applicant, the court may waive such notice.

B. Every application shall be under oath and shall include the place of residence of the applicant, the names of both parents, including the maiden name of his mother, the date and place of birth of the applicant, the applicant's felony conviction record, if any, whether the applicant is a person for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, whether the applicant is presently incarcerated or a probationer with any court, and if the applicant has previously changed his name, his former name or names.

C. On any such application and hearing, if such be demanded, the court, shall, unless the evidence shows that the change of name is sought for a fraudulent purpose or would otherwise infringe upon the rights of others or, in a case involving a minor, that the change of name is not in the best interest of the minor, order a change of name.

D. No application shall be accepted by a court for a change of name of a probationer, person for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, or incarcerated person unless the court finds that good cause exists for consideration of such application under the reasons alleged in the application for the requested change of name. If the court accepts the application, the court shall mail or deliver a copy of the application to the attorney for the Commonwealth for the jurisdiction where the application was filed and the attorney for the Commonwealth for any jurisdiction in the Commonwealth where a conviction occurred that resulted in the applicant's probation, registration with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, or incarceration. The attorney for the Commonwealth where the application was filed shall be entitled to respond and represent the interests of the Commonwealth by filing a response within 30 days after the mailing or delivery of a

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59 copy of the application. The court shall conduct a hearing on the application and may order a change of
60 name if, after receiving and considering evidence concerning the circumstances regarding the requested
61 change of name, the court determines that the change of name (i) would not frustrate a legitimate
62 law-enforcement purpose, (ii) is not sought for a fraudulent purpose, and (iii) would not otherwise
63 infringe upon the rights of others. Such order shall contain written findings stating the court's basis for
64 granting the order.

65 E. The provisions of subsection D are jurisdictional and any order granting a change of name
66 pursuant to subsection D that fails to comply with any provision of subsection D is void ab initio. The
67 attorney for the Commonwealth for the jurisdiction where such an application was filed has the authority
68 to bring an independent action at any time to have such order declared void. If the attorney for the
69 Commonwealth brings an independent action to have the order declared void, notice of the action shall
70 be served upon the person who was granted a change of name who shall have 30 days after service to
71 respond. If the person whose name was changed files a response objecting to having the order declared
72 void, the court shall hold a hearing. If an order granting a change of name is declared void pursuant to
73 this subsection, or if a person is convicted of perjury pursuant to § 18.2-434 for unlawfully changing his
74 name pursuant to § 18.2-504.1 based on conduct that violates this section, the clerk of the court entering
75 the order or the order of conviction shall transmit a certified copy of the order to (i) the State Registrar
76 of Vital Records, (ii) the Department of Motor Vehicles, (iii) the State Board of Elections, (iv) the
77 Central Criminal Records Exchange, and (v) any agency or department of the Commonwealth that has
78 issued a license to the person where such license utilizes the person's changed name, *if known to the*
79 *court and identified in the court order.*

80 F. The order shall contain no identifying information other than the applicant's former name or
81 names, new name, and current address. The clerk of the court shall spread the order upon the current
82 deed book in his office, index it in both the old and new names, and transmit a certified copy of the
83 order and the application to the State Registrar of Vital Records and the Central Criminal Records
84 Exchange. Transmittal of a copy of the order and the application to the State Registrar of Vital Records
85 and the Central Criminal Records Exchange shall not be required of a person who changed his or her
86 former name by reason of marriage and who makes application to resume a former name pursuant to
87 § 20-121.4.

88 G. If the applicant shall show cause to believe that in the event his change of name should become a
89 public record, a serious threat to the health or safety of the applicant or his immediate family would
90 exist, the chief judge of the circuit court may waive the requirement that the application be under oath
91 or the court may order the record sealed and direct the clerk not to spread and index any orders entered
92 in the cause, and ~~shall not transmit~~ a certified copy *shall not be transmitted* to the State Registrar of
93 Vital Records or the Central Criminal Records Exchange. ~~Upon receipt of~~ *At such time as a name*
94 *change order is received* by the State Registrar of Vital Records, for a person born in ~~this the~~
95 Commonwealth, together with a proper request and payment of required fees, the Registrar shall issue
96 certifications of the amended birth record which do not reveal the former name or names of the
97 applicant unless so ordered by a court of competent jurisdiction. Such certifications shall not be marked
98 "amended" and show the effective date as provided in § 32.1-272. Such order shall set forth the date and
99 place of birth of the person whose name is changed, the full names of his parents, including the maiden
100 name of the mother and, if such person has previously changed his name, his former name or names.

101 **§ 8.01-453. When and how payment or discharge entered on judgment docket.**

102 The fact of ~~payment or discharge, either in whole or in part,~~ *satisfaction* of any judgment so
103 docketed, and if there is more than one defendant, by which defendant it was ~~paid or discharged~~
104 *satisfied*, shall be entered by the clerk in whose office the judgment is docketed whenever it appears
105 from a certificate of the clerk of the court in which the judgment was rendered, that the judgment has
106 been satisfied, ~~in whole or in part,~~ or upon the direction, in writing, of the judgment creditor or his duly
107 authorized attorney or other agent.

108 **§ 8.01-454. Judgment, when paid, to be so noted by creditor.**

109 In all cases in which ~~payment or~~ satisfaction of any judgment so docketed is made, which is not
110 required to be certified to the clerk under § 8.01-455, it shall be the duty of the judgment creditor,
111 himself, or by his agent or attorney, to cause such ~~payment or~~ satisfaction by the defendant, ~~whether in~~
112 ~~whole or in part,~~ and if there is more than one defendant, by which defendant it was ~~paid or discharged~~
113 *satisfied*, to be entered within 30 days after the same is made, on such judgment docket. If the judgment
114 has not been docketed, then the entry shall be made on the execution book in the office of the clerk
115 from which the execution issued. For any failure to do so within 90 days, or after 10 days' notice to do
116 so by the judgment debtor or his agent or attorney, the judgment creditor shall be liable to a fine of
117 \$100 and shall pay the filing cost of the release. The entry of ~~payment or~~ satisfaction shall be signed by
118 the creditor or his duly authorized attorney or other agent and be attested by the clerk in whose office
119 the judgment is docketed, or when not docketed, by the clerk from whose office the execution issued;
120 however, the cost of the release shall be paid by the judgment debtor.

121 **§ 64.2-449. Procedure in probate proceedings.**

122 A. In every probate proceeding, the court *or clerk* may require all testamentary papers of the testator
123 be produced and may compel the production of the will of a testator that is in the custody of any
124 person.

125 B. A summons may be served by an order of publication on any person interested in the probate of
126 the will in accordance with § 8.01-316.

127 C. The court may appoint a guardian ad litem for any person interested in the probate of the will in
128 accordance with § 8.01-9.

129 D. The record of the testimony given by witnesses in court on the motion to admit a will to probate
130 and any out of court depositions of witnesses who cannot be produced at a jury trial may be admitted as
131 evidence and given such weight as the jury deems proper.

132 **§ 64.2-505. When security not required.**

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

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

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

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

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