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SENATE BILL NO. 1044

Offered January 11, 2017

Prefiled January 5, 2017

A BILL to amend and reenact §§ 17.1-292, 17.1-293, and 17.1-295 of the Code of Virginia, relating to remote access to nonconfidential court records for date of birth verification.

Patron—Obenshain

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

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

§ 17.1-292. Applicability; definitions.

A. The provisions of §§ 17.1-293 ~~of this article~~ and 17.1-295 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, traffic, or criminal proceeding in the court, and any appeal from a district 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 that are more than 100 years old;

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.

8. *Providing secure remote access to nonconfidential court records to any third party for the sole purpose of confirming a person's complete date of birth.*

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59 F. Nothing in this section shall prohibit the Supreme Court or any other court clerk from providing
60 online access to a case management system that may include abstracts of case filings and proceedings in
61 the courts of the Commonwealth.

62 G. The court clerk shall be immune from suit arising from any acts or omissions relating to
63 providing remote access on the Internet pursuant to this section unless the clerk was grossly negligent or
64 engaged in willful misconduct.

65 This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity
66 already existing in statutory or common law, or to affect any cause of action accruing prior to July 1,
67 2005.

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

75 **§ 17.1-295. Definitions.**

76 As used in this title:

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

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

84 "Electronic recording of land records" means the networks or systems maintained by a clerk of the
85 circuit court, or the clerk's designated application service providers, for the submittal of instruments for
86 electronic filing of land records in accordance with the Uniform Real Property Electronic Recording Act
87 (§ 55-142.10 et seq.), the provisions of Article 2.1 (§ 55-66.8 et seq.) of Chapter 4 of Title 55 regarding
88 the satisfaction of mortgages and the provisions of this title.

89 "Operational expenses" means expenses of the clerk of court used to maintain the clerk's office and
90 includes, but is not limited to, (i) computer support, maintenance, enhancements, upgrades, and
91 replacements and office automation and information technology equipment, including software and
92 conversion services; (ii) preserving, maintaining, and enhancing court records, including, but not limited
93 to, the costs of repairs, maintenance, consulting services, service contracts, redaction of social security
94 numbers from certain records, and system replacements or upgrades; and (iii) improving public access to
95 records maintained by the clerk, including locating technology in an offsite facility for such purposes or
96 for implementation of a disaster recovery plan.

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

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

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

108 "Subscriber" means any person who has entered into a subscriber agreement with the clerk of the
109 circuit court authorizing the subscriber to have secure remote access to land records or secure remote
110 access to court records maintained by the clerk or the clerk's designated application service providers. If
111 the subscriber is an entity with more than one person who will use the network or system to access land
112 records maintained by the clerk, or the clerk's designated application service providers, each individual
113 user shall execute a subscriber agreement and obtain a separate "user id" and "password" from the clerk.
114 The subscriber is responsible for the fees due under this title and the proper use of the secure remote
115 access system pursuant to the subscriber agreement, applicable Virginia law, and Secure Remote Access
116 Standards developed by the Virginia Information Technologies Agency.