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SENATE BILL NO. 545

Offered January 10, 2018

Prefiled January 9, 2018

A *BILL to amend the Code of Virginia by adding in Title 17.1 a chapter numbered 10, consisting of sections numbered 17.1-1000 through 17.1-1006, relating to court reporters; prohibited actions; civil penalties.*

Patron—Obenshain

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 17.1 a chapter numbered 10, consisting of sections numbered 17.1-1000 through 17.1-1006, as follows:

CHAPTER 10.
COURT REPORTERS.

§ 17.1-1000. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Court reporter" means a person who records legal proceedings by stenotype machine or other means allowed under the Rules of Supreme Court of Virginia and provides prompt preparation of an accurate, verbatim written transcript.

"Court reporting services" means services provided by a court reporter.

"Court reporting services provider" means a business, entity, or firm that provides or arranges for court reporting services.

"Legal proceeding" includes a court proceeding, a deposition, an administrative hearing, an arbitration hearing, an examination under oath, and a sworn statement.

§ 17.1-1001. Applicability; waiver.

A. This chapter applies to court reporting services performed in the Commonwealth, whether a party appears in person or by remote access, provided by:

1. A court reporter or court reporting services provider, whether or not based in the Commonwealth, in connection with a legal proceeding that is commenced or maintained in the Commonwealth; or

2. A court reporter or court reporting services provider based in the Commonwealth in connection with a legal proceeding that is commenced or maintained in a foreign jurisdiction.

B. The provisions of this chapter shall not be waived or otherwise modified. Any waiver or modification is contrary to public policy and is void and unenforceable.

§ 17.1-1002. Relationship to party or proceeding; prohibition.

A. A court reporter or a court reporting services provider may not provide court reporting services for a legal proceeding if such court reporter or the court reporting services provider:

1. Has a contractual relationship, other than a lease for the rental of real property, with a party or an attorney, representative, agent, or insurer of a party;

2. Is associated with a business, entity, or firm that has a contractual relationship, other than a lease for the rental of real property, with a party or an attorney, representative, agent, or insurer of a party;

3. Engages in any prohibited actions set forth in § 17.1-1003; or

4. Is a party.

B. The prohibitions contained in subdivisions A 1 and 2 do not apply to a single oral or written contractual agreement between the court reporter or court reporting services provider and an attorney, party to an action, insurance company, or other person for the provision of court reporting services in any one case, action, or legal proceeding.

C. Prior to the provision of court reporting services, a court reporter or court reporting services provider shall make reasonable efforts to determine whether the provision of court reporting services by such court reporter or court reporting services provider is prohibited under this chapter.

§ 17.1-1003. Prohibited actions; exception.

A. A court reporter or court reporting services provider shall not:

1. Enter into an oral or written contractual agreement for more than one case, action, or legal proceeding with an attorney, party to an action, insurance company, third-party administrator, or any other person or entity that has a financial interest in the case, action, or legal proceeding. This prohibition does not include an agreement to provide services for two or more depositions that are part of the same case;

2. Give an economic or other advantage to a party or a party's attorney, representative, agent,

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59 insurer, or employee without offering the advantage to all parties or fail to offer comparable services,
60 prices, or financial terms to all parties, except that different credit terms may be offered based on
61 payment experience and creditworthiness;

62 3. Offer or provide court reporting services if payment for those services is made contingent on the
63 outcome of the legal proceeding, base the compensation for the court reporting services on the outcome
64 of the legal proceeding, or otherwise give the court reporter or court reporting services provider a
65 financial interest in the action;

66 4. Enter into an agreement for court reporting services that restricts an attorney from using the
67 court reporter or court reporting services provider of the attorney's choosing;

68 5. Include a court reporter or court reporting services provider on a list of preferred providers of
69 court reporting services that is maintained by a person, business, entity, or firm that has entered into an
70 oral or written contractual agreement for more than one case, action, or legal proceeding with an
71 attorney, party, insurance company, third-party administrator, or any other person or entity that has a
72 financial interest in the case, action, or legal proceeding;

73 6. Allow the format, content, or body of a certified transcript as submitted by the court reporter to
74 be manipulated in a manner that increases the cost of the transcript; or

75 7. Provide additional advocacy or litigation support services, including trial preparation assistance,
76 deposition summaries, and nonpublished transcript databases.

77 B. Notwithstanding subsection A, if authorized or required by law, ordinance, or rule, a
78 governmental entity may obtain court reporting services on a long-term basis through competitive
79 bidding.

80 **§ 17.1-1004. Comparable treatment of parties.**

81 A. At any time during or following a legal proceeding, an attorney or a party is entitled to an
82 itemized statement of the rates and charges for all services that have been or will be provided by a
83 court reporter or court reporting services provider that is providing court reporting services to any
84 party to the legal proceeding.

85 B. A court reporter or court reporting services provider shall provide to the parties, if known,
86 information on prices, terms, and conditions of court reporting services in sufficient time prior to the
87 commencement of the legal proceeding to allow the parties the opportunity to effectively negotiate for
88 any changes necessary to ensure that comparable terms and conditions are made available to all
89 parties.

90 C. Upon request, a court reporter or court reporting services provider shall provide an itemized
91 invoice of all rates and charges for court reporting services provided to the administrative body, court,
92 or administrative tribunal in which the action upon which the legal proceeding is based is pending or
93 scheduled to be heard.

94 **§ 17.1-1005. Pro bono services.**

95 Nothing in this chapter shall be construed to limit the ability of a court reporter or court reporting
96 services provider to provide pro bono services to persons or parties with limited means.

97 **§ 17.1-1006. Penalties.**

98 A. A person harmed by a violation of this chapter may file a motion alleging the violation with the
99 administrative body, court, or administrative tribunal in which the action upon which the legal
100 proceeding is based is pending or is scheduled to be heard. A person need not commence a separate
101 action to allege a violation of this chapter.

102 B. A complaint alleging a violation of this chapter may be filed by any person with knowledge of the
103 offense or by the administrative body, court, or administrative tribunal on its own initiative.

104 C. A violation and request for civil penalties and sanctions may be brought:

105 1. By motion in the administrative body, court, or administrative tribunal in which the case is
106 pending or scheduled to be heard; or

107 2. In the general district court for the county or city in which the court reporting services were or
108 are scheduled to be provided.

109 D. A court reporter or court reporting services provider that willfully violates this chapter shall be
110 subject to a civil penalty of \$500 for the first offense, \$750 for the second offense, and \$1,000 for the
111 third and any subsequent offense. Such penalty shall be collected by the attorney for the Commonwealth
112 and the proceeds shall be credited to the Virginia State Bar and disbursed to the Legal Services
113 Corporation of Virginia.

114 In addition to any civil penalty assessed, the administrative body, court, or administrative tribunal
115 that received the complaint pursuant to this section and determined that a person or entity violated this
116 chapter may bar such person or entity from providing services in matters before such body, court, or
117 tribunal and may suspend or revoke any authorization or registration held by such person or entity that
118 authorizes the person or entity to do business in the Commonwealth.

119 E. An administrative body, court, or administrative tribunal that receives a complaint pursuant to
120 this section shall submit a record of the nature and disposition of each complaint to the Virginia State

121 *Bar, which shall make such information publicly available on its website.*