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## SENATE BILL NO. 545

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice)

(Patron Prior to Substitute—Senator Obenshain)

Senate Amendments in [ ] — February 7, 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 17.1-1005, relating to court reporters; prohibited actions; civil penalties.

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 17.1-1005, 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. 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 a party, insurance company, or any other person or entity that has a financial interest in the case, action, or legal proceeding. This prohibition does not apply to a contract for the provision of court reporting services between a court reporter or court reporting services provider and an attorney or law firm that is counsel of record in one or more cases, actions, or legal proceedings.

2. Give an economic or other advantage to a party or a party's attorney, representative, agent, insurer, or employee without offering the advantage to all parties or fail to offer comparable services, prices, or financial terms to all parties, except that different credit terms may be offered based on payment experience and creditworthiness;

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

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

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

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

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

B. Notwithstanding subsection A, if authorized or required by law, ordinance, or rule, a

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60 governmental entity may obtain court reporting services on a long-term basis through competitive  
61 bidding.

62 **§ 17.1-1003. Comparable treatment of parties.**

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

67 B. Upon request, a court reporter or court reporting services provider shall provide to the parties, if  
68 known, information on prices, terms, and conditions of court reporting services in sufficient time prior  
69 to the commencement of the legal proceeding to allow the parties the opportunity to effectively negotiate  
70 for any changes necessary to ensure that comparable terms and conditions are made available to all  
71 parties.

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

76 **§ 17.1-1004. Pro bono services.**

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

79 **§ 17.1-1005. Penalties.**

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

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

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

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

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

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

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

101 E. An administrative body, court, or administrative tribunal that [ ~~receives~~ finds a violation as a  
102 result of ] a complaint pursuant to this section shall submit a record of the nature and disposition of  
103 each complaint to the Virginia State Bar, which shall make such information publicly available on its  
104 website.