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SENATE BILL NO. 545

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 23, 2018)

(Patron Prior to Substitute—Senator Obenshain)

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 related 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 unpublished transcript databases.

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

63 **§ 17.1-1003. Comparable treatment of parties.**

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

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

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

77 **§ 17.1-1004. Pro bono services.**

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

80 **§ 17.1-1005. Penalties.**

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

85 B. A complaint alleging a violation of this chapter may be filed by any person with knowledge of the
86 offense or by the administrative body, court, or administrative tribunal on its own initiative. The court
87 reporter or court reporting services provider alleged to have violated this chapter shall be given notice
88 and a right to be heard on any such complaint, with the right of appeal or review as in other cases.

89 C. A complaint and request for civil penalties and sanctions may be brought:

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

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

94 D. A court reporter or court reporting services provider that willfully violates this chapter shall be
95 subject to a civil penalty of \$500 for the first offense, \$750 for the second offense, and \$1,000 for the
96 third and any subsequent offense. Such penalty shall be collected by the clerk of the administrative
97 body, court, or administrative tribunal in which such penalty was assessed. The amounts so collected
98 shall be paid by the clerk to the state treasury and credited to the Legal Aid Services Fund within the
99 Virginia State Bar fund. Such amounts credited to the Legal Aid Services Fund shall be disbursed by the
100 Virginia State Bar by check from the State Treasurer upon a warrant of the comptroller to nonprofit
101 legal aid programs organized under the auspices of the Virginia State Bar through the Legal Services
102 Corporation of Virginia.

103 In addition to any civil penalty assessed, the administrative body, court, or administrative tribunal
104 that received the complaint pursuant to this section and determined that a person or entity violated this
105 chapter may bar such person or entity from providing services in matters before such body, court, or
106 tribunal.

107 E. An administrative body, court, or administrative tribunal that finds a violation as a result of a
108 complaint pursuant to this section shall submit a record of the nature and disposition of each complaint
109 to the Virginia State Bar, which shall make such information publicly available on its website.