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## SENATE BILL NO. 545

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee  
on March 5, 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 and associated videography services.

"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. Enter into an oral or written contractual agreement with a party, insurance company, or any other person or entity that has a financial interest in the case, action, or legal proceeding to 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. This prohibition does not apply to a contract between a court reporter or court reporting services provider and an attorney or law firm to include such court reporter or court reporting services provider on a list of preferred providers maintained by such attorney or law

60 firm;

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

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

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

68 **§ 17.1-1003. Comparable treatment of parties.**

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

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

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

82 **§ 17.1-1004. Pro bono services.**

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

85 **§ 17.1-1005. Penalties.**

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

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

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

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

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

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

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

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