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SENATE BILL NO. 940

Offered January 13, 2020

A *BILL to amend and reenact §§ 17.1-275 and 64.2-409 of the Code of Virginia, relating to circuit court clerk's fee; lodging of wills.*

Patron—Favola

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:**1. That §§ 17.1-275 and 64.2-409 of the Code of Virginia are amended and reenacted as follows:****§ 17.1-275. Fees collected by clerks of circuit courts; generally.**

A. A clerk of a circuit court shall, for services performed by virtue of his office, charge the following fees:

1. [Repealed.]

2. For recording and indexing in the proper book any writing and all matters therewith, or for recording and indexing anything not otherwise provided for, \$16 for an instrument or document consisting of 10 or fewer pages or sheets; \$30 for an instrument or document consisting of 11 to 30 pages or sheets; and \$50 for an instrument or document consisting of 31 or more pages or sheets. Whenever any writing to be recorded includes plat or map sheets no larger than eight and one-half inches by 14 inches, such plat or map sheets shall be counted as ordinary pages for the purpose of computing the recording fee due pursuant to this section. A fee of \$15 per page or sheet shall be charged with respect to plat or map sheets larger than eight and one-half inches by 14 inches. Only a single fee as authorized by this subdivision shall be charged for recording a certificate of satisfaction that releases the original deed of trust and any corrected or revised deeds of trust. One dollar and fifty cents of the fee collected for recording and indexing shall be designated for use in preserving the permanent records of the circuit courts. The sum collected for this purpose shall be administered by The Library of Virginia in cooperation with the circuit court clerks.

3. For appointing and qualifying any personal representative, committee, trustee, guardian, or other fiduciary, in addition to any fees for recording allowed by this section, \$20 for estates not exceeding \$50,000, \$25 for estates not exceeding \$100,000 and \$30 for estates exceeding \$100,000. No fee shall be charged for estates of \$5,000 or less.

4. For entering and granting and for issuing any license, other than a marriage license or a hunting and fishing license, and administering an oath when necessary, \$10.

5. For issuing a marriage license, attaching certificate, administering or receiving all necessary oaths or affidavits, indexing and recording, \$10. For recording an order to celebrate the rites of marriage pursuant to § 20-25, \$25 to be paid by the petitioner.

6. For making out any bond, other than those under § 17.1-267 or subdivision A 4, administering all necessary oaths and writing proper affidavits, \$3.

7. For all services rendered by the clerk in any garnishment or attachment proceeding, the clerk's fee shall be \$15 in cases not exceeding \$500 and \$25 in all other cases.

8. For making out a copy of any paper, record, or electronic record to go out of the office, which is not otherwise specifically provided for herein, a fee of \$0.50 for each page or, if an electronic record, each image. From such fees, the clerk shall reimburse the locality the costs of making out the copies and pay the remaining fees directly to the Commonwealth. The funds to recoup the cost of making out the copies shall be deposited with the county or city treasurer or Director of Finance, and the governing body shall budget and appropriate such funds to be used to support the cost of copies pursuant to this subdivision. For purposes of this section, the costs of making out the copies authorized under this section shall include costs included in the lease and maintenance agreements for the equipment and the technology needed to operate electronic systems in the clerk's office used to make out the copies, but shall not include salaries or related benefits. The costs of copies shall otherwise be determined in accordance with § 2.2-3704. However, there shall be no charge to the recipient of a final order or decree to send an attested copy to such party.

9. For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying it, the clerk shall charge \$2 and for attaching the certificate of the judge, if the clerk is requested to do so, the clerk shall charge an additional \$0.50.

10. In any case in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk shall assess a fee of \$150 for each felony conviction and each felony disposition under § 18.2-251 which

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59 shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and
60 Treatment Fund.

61 11. In any case in which a person is convicted of a violation of any provision of Article 1
62 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk
63 shall assess a fee for each misdemeanor conviction and each misdemeanor disposition under § 18.2-251,
64 which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and
65 Treatment Fund as provided in § 17.1-275.8.

66 12. Upon the defendant's being required to successfully complete traffic school, a mature driver
67 motor vehicle crash prevention course, or a driver improvement clinic in lieu of a finding of guilty, the
68 court shall charge the defendant fees and costs as if he had been convicted.

69 13. In all civil actions that include one or more claims for the award of monetary damages the clerk's
70 fee chargeable to the plaintiff shall be \$100 in cases seeking recovery not exceeding \$49,999; \$200 in
71 cases seeking recovery exceeding \$49,999, but not exceeding \$100,000; \$250 in cases seeking recovery
72 exceeding \$100,000, but not exceeding \$500,000; and \$300 in cases seeking recovery exceeding
73 \$500,000. Ten dollars of each such fee shall be apportioned to the Courts Technology Fund established
74 under § 17.1-132. A fee of \$25 shall be paid by the plaintiff at the time of instituting a condemnation
75 case, in lieu of any other fees. There shall be no fee charged for the filing of a cross-claim or setoff in
76 any pending action. However, the fees prescribed by this subdivision shall be charged upon the filing of
77 a counterclaim or a claim impleading a third-party defendant. The fees prescribed above shall be
78 collected upon the filing of papers for the commencement of civil actions. This subdivision shall not be
79 applicable to cases filed in the Supreme Court of Virginia.

80 13a. For the filing of any petition seeking court approval of a settlement where no action has yet
81 been filed, the clerk's fee, chargeable to the petitioner, shall be \$50, to be paid by the petitioner at the
82 time of filing the petition.

83 14. In addition to the fees chargeable for civil actions, for the costs of proceedings for judgments by
84 confession under §§ 8.01-432 through 8.01-440, the clerk shall tax as costs (i) the cost of registered or
85 certified mail; (ii) the statutory writ tax, in the amount required by law to be paid on a suit for the
86 amount of the confessed judgment; (iii) for the sheriff for serving each copy of the order entering
87 judgment, \$12; and (iv) for docketing the judgment and issuing executions thereon, the same fees as
88 prescribed in subdivision A 17.

89 15. For qualifying notaries public, including the making out of the bond and any copies thereof,
90 administering the necessary oaths, and entering the order, \$10.

91 16. For each habeas corpus proceeding, the clerk shall receive \$10 for all services required
92 thereunder. This subdivision shall not be applicable to such suits filed in the Supreme Court of Virginia.

93 17. For docketing and indexing a judgment from any other court of the Commonwealth, for
94 docketing and indexing a judgment in the new name of a judgment debtor pursuant to the provisions of
95 § 8.01-451, but not when incident to a divorce, for noting and filing the assignment of a judgment
96 pursuant to § 8.01-452, a fee of \$5; and for issuing an abstract of any recorded judgment, when proper
97 to do so, a fee of \$5; and for filing, docketing, indexing and mailing notice of a foreign judgment, a fee
98 of \$20.

99 18. For all services rendered by the clerk in any court proceeding for which no specific fee is
100 provided by law, the clerk shall charge \$10, to be paid by the party filing said papers at the time of
101 filing; however, this subdivision shall not be applicable in a divorce cause prior to and including the
102 entry of a decree of divorce from the bond of matrimony.

103 19, 20. [Repealed.]

104 21. For making the endorsements on a forthcoming bond and recording the matters relating to such
105 bond pursuant to the provisions of § 8.01-529, \$1.

106 22. For all services rendered by the clerk in any proceeding pursuant to § 57-8 or 57-15, \$10.

107 23. For preparation and issuance of a subpoena duces tecum, \$5.

108 24. For all services rendered by the clerk in matters under § 8.01-217 relating to change of name,
109 \$20; however, this subdivision shall not be applicable in cases where the change of name is incident to
110 a divorce.

111 25. For providing court records or documents on microfilm, per frame, \$0.50.

112 26. In all divorce and separate maintenance proceedings, and all civil actions that do not include one
113 or more claims for the award of monetary damages, the clerk's fee chargeable to the plaintiff shall be
114 \$60, \$10 of which shall be apportioned to the Courts Technology Fund established under § 17.1-132 to
115 be paid by the plaintiff at the time of instituting the suit, which shall include the furnishing of a duly
116 certified copy of the final decree. The fees prescribed by this subdivision shall be charged upon the
117 filing of a counterclaim or a claim impleading a third-party defendant. However, no fee shall be charged
118 for (i) the filing of a cross-claim or setoff in any pending suit or (ii) the filing of a counterclaim or any
119 other responsive pleading in any annulment, divorce, or separate maintenance proceeding. In divorce
120 cases, when there is a merger of a divorce of separation a mensa et thoro into a decree of divorce a

vinculo, the above mentioned fee shall include the furnishing of a duly certified copy of both such decrees.

27. For the acceptance of credit or debit cards in lieu of money to collect and secure all fees, including filing fees, fines, restitution, forfeiture, penalties and costs, the clerk shall collect from the person presenting such credit or debit card a reasonable convenience fee for the processing of such credit or debit card. Such convenience fee shall not exceed four percent of the amount paid for the transaction or a flat fee of \$2 per transaction. The clerk may set a lower convenience fee for electronic filing of civil or criminal proceedings pursuant to § 17.1-258.3. Nothing herein shall be construed to prohibit the clerk from outsourcing the processing of credit and debit card transactions to a third-party private vendor engaged by the clerk. Convenience fees shall be used to cover operational expenses as defined in § 17.1-295.

28. For the return of any check unpaid by the financial institution on which it was drawn or notice is received from the credit or debit card issuer that payment will not be made for any reason, the clerk may collect a fee of \$50 or 10 percent of the amount of the payment, whichever is greater.

29. For all services rendered, except in cases in which costs are assessed pursuant to § 17.1-275.1, 17.1-275.2, 17.1-275.3, or 17.1-275.4, in an adoption proceeding, a fee of \$20, in addition to the fee imposed under § 63.2-1246, to be paid by the petitioner or petitioners. For each petition for adoption filed pursuant to § 63.2-1201, except those filed pursuant to subdivisions 5 and 6 of § 63.2-1210, an additional \$50 filing fee as required under § 63.2-1201 shall be deposited in the Virginia Birth Father Registry Fund pursuant to § 63.2-1249.

30. For issuing a duplicate license for one lost or destroyed as provided in § 29.1-334, a fee in the same amount as the fee for the original license.

31. For the filing of any petition as provided in §§ 33.2-1023, 33.2-1024, and 33.2-1027, a fee of \$5 to be paid by the petitioner; and for the recordation of a certificate or copy thereof, as provided for in § 33.2-1021, as well as for any order of the court relating thereto, the clerk shall charge the same fee as for recording a deed as provided for in this section, to be paid by the party upon whose request such certificate is recorded or order is entered.

32. For making up, certifying and transmitting original record pursuant to the Rules of the Supreme Court, including all papers necessary to be copied and other services rendered, except in cases in which costs are assessed pursuant to § 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, or 17.1-275.9, a fee of \$20.

33. [Repealed.]

34. For filings, etc., under the Uniform Federal Lien Registration Act (§ 55.1-653 et seq.), the fees shall be as prescribed in that Act.

35. For filing the appointment of a resident agent for a nonresident property owner in accordance with § 55.1-1211 or 55.1-1401, a fee of \$10.

36. [Repealed.]

37. For recordation of certificate and registration of names of nonresident owners in accordance with § 59.1-74, a fee of \$10.

38. For maintaining the information required under the Overhead High Voltage Line Safety Act (§ 59.1-406 et seq.), the fee as prescribed in § 59.1-411.

39. For lodging, indexing, and preserving a will in accordance with § 64.2-409, a fee of \$2 \$5.

40. For filing a financing statement in accordance with § 8.9A-505, the fee shall be as prescribed under § 8.9A-525.

41. For filing a termination statement in accordance with § 8.9A-513, the fee shall be as prescribed under § 8.9A-525.

42. For filing assignment of security interest in accordance with § 8.9A-514, the fee shall be as prescribed under § 8.9A-525.

43. For filing a petition as provided in §§ 64.2-2001 and 64.2-2013, the fee shall be \$10.

44. For issuing any execution, and recording the return thereof, a fee of \$1.50.

45. For the preparation and issuance of a summons for interrogation by an execution creditor, a fee of \$5. If there is no outstanding execution, and one is requested herewith, the clerk shall be allowed an additional fee of \$1.50, in accordance with subdivision A 44.

B. In accordance with § 17.1-281, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for courthouse construction, renovation or maintenance.

C. In accordance with § 17.1-278, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for services provided for the poor, without charge, by a nonprofit legal aid program.

D. In accordance with § 42.1-70, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for public law libraries.

182 E. All fees collected pursuant to subdivision A 27 and § 17.1-276 shall be deposited by the clerk
183 into a special revenue fund held by the clerk, which will restrict the funds to their statutory purpose.

184 F. The provisions of this section shall control the fees charged by clerks of circuit courts for the
185 services above described.

186 **§ 64.2-409. Wills of living persons lodged for safekeeping with clerks of certain courts.**

187 A. A person or his attorney may, during the person's lifetime, lodge for safekeeping with the clerk of
188 the circuit court serving the jurisdiction where the person resides any will executed by such person. The
189 clerk shall receive such will and give the person lodging it a receipt. The clerk shall (i) place the will in
190 an envelope and seal it securely, (ii) number the envelope and endorse upon it the name of the testator
191 and the date on which it was lodged, and (iii) index the same alphabetically in a permanent index that
192 shows the number and date such will was deposited.

193 B. An attorney-at-law, bank, or trust company that has held a will for safekeeping for a client for at
194 least seven years and that has no knowledge of whether the client is alive or dead after such time may
195 lodge such will with the clerk as provided in subsection A.

196 C. The clerk shall carefully preserve the envelope containing the will unopened until it is returned to
197 the testator or his nominee in the testator's lifetime upon request of the testator or his nominee in
198 writing or until the death of the testator. If such will is returned during the testator's lifetime and is later
199 returned to the clerk, it shall be considered to be a separate lodging under the provisions of this section.

200 D. Upon notice of the testator's death, the clerk shall open the will and deliver the same to any
201 person entitled to offer it for probate.

202 E. The clerk shall charge a fee of \$2 \$5 for lodging, indexing, and preserving a will pursuant to this
203 section.

204 F. The provisions of this section are applicable only to the clerk's office of a court where the judge
205 or judges of such court have entered an order authorizing the use of the clerk's office for such purpose.

206 G. The clerk may destroy any will that has been lodged in his office for safekeeping under this
207 section for 100 years or more.