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SENATE BILL NO. 1294

Offered January 13, 2021

Prefiled January 12, 2021

A BILL to amend and reenact §§ 17.1-275 and 19.2-392.2 of the Code of Virginia, relating to expungement of police and court records; fees.

Patron—DeSteph

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 17.1-275 and 19.2-392.2 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 [Repealed.]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, \$18 for an instrument or document consisting of 10 or fewer pages or sheets; \$32 for an instrument or document consisting of 11 to 30 pages or sheets; and \$52 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 \$17 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. Three dollars 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

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59 shall assess a fee of \$150 for each felony conviction and each felony disposition under § 18.2-251 which
60 shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and
61 Treatment Fund.

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

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

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

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

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

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

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

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

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

104 19, 20. [Repealed.]

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

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

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

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

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

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

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 \$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.

46. *For filing a petition for expungement pursuant to § 19.2-392.2, a fee of \$25.*

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.

182 D. In accordance with § 42.1-70, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A
183 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for public law libraries.

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

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

188 **§ 19.2-392.2. Expungement of police and court records.**

189 A. If a person is charged with the commission of a crime, a civil offense, or any offense defined in
190 Title 18.2, and

191 1. Is acquitted, or

192 2. A nolle prosequi is taken or the charge is otherwise dismissed, including dismissal by accord and
193 satisfaction pursuant to § 19.2-151, he may file a petition setting forth the relevant facts and requesting
194 expungement of the police records and the court records relating to the charge.

195 B. If any person whose name or other identification has been used without his consent or
196 authorization by another person who has been charged or arrested using such name or identification, he
197 may file a petition with the court disposing of the charge for relief pursuant to this section. Such person
198 shall not be required to pay any fees for the filing of a petition under this subsection. A petition filed
199 under this subsection shall include one complete set of the petitioner's fingerprints obtained from a
200 law-enforcement agency.

201 C. The petition with a copy of the warrant, summons, or indictment if reasonably available shall be
202 filed in the circuit court of the county or city in which the case was disposed of by acquittal or being
203 otherwise dismissed and shall contain, except where not reasonably available, the date of arrest and the
204 name of the arresting agency. Where this information is not reasonably available, the petition shall state
205 the reason for such unavailability. The petition shall further state the specific criminal charge or civil
206 offense to be expunged, the date of final disposition of the charge as set forth in the petition, the
207 petitioner's date of birth, and the full name used by the petitioner at the time of arrest.

208 D. A copy of the petition shall be served on the attorney for the Commonwealth of the city or
209 county in which the petition is filed. The attorney for the Commonwealth may file an objection or
210 answer to the petition or may give written notice to the court that he does not object to the petition
211 within 21 days after it is served on him.

212 E. The petitioner shall obtain from a law-enforcement agency one complete set of the petitioner's
213 fingerprints and shall provide that agency with a copy of the petition for expungement. The
214 law-enforcement agency shall submit the set of fingerprints to the Central Criminal Records Exchange
215 (CCRE) with a copy of the petition for expungement attached. The CCRE shall forward under seal to
216 the court a copy of the petitioner's criminal history, a copy of the source documents that resulted in the
217 CCRE entry that the petitioner wishes to expunge, if applicable, and the set of fingerprints. Upon
218 completion of the hearing, the court shall return the fingerprint card to the petitioner. If no hearing was
219 conducted, upon the entry of an order of expungement or an order denying the petition for
220 expungement, the court shall cause the fingerprint card to be destroyed unless, within 30 days of the
221 date of the entry of the order, the petitioner requests the return of the fingerprint card in person from the
222 clerk of the court or provides the clerk of the court a self-addressed, stamped envelope for the return of
223 the fingerprint card.

224 F. After receiving the criminal history record information from the CCRE, the court shall conduct a
225 hearing on the petition. If the court finds that the continued existence and possible dissemination of
226 information relating to the arrest of the petitioner causes or may cause circumstances which constitute a
227 manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and
228 court records, including electronic records, relating to the charge. Otherwise, it shall deny the petition.
229 However, if the petitioner has no prior criminal record and the arrest was for a misdemeanor violation
230 or the charge was for a civil offense, the petitioner shall be entitled, in the absence of good cause shown
231 to the contrary by the Commonwealth, to expungement of the police and court records relating to the
232 charge, and the court shall enter an order of expungement. If the attorney for the Commonwealth of the
233 county or city in which the petition is filed (i) gives written notice to the court pursuant to subsection D
234 that he does not object to the petition and (ii) when the charge to be expunged is a felony, stipulates in
235 such written notice that the continued existence and possible dissemination of information relating to the
236 arrest of the petitioner causes or may cause circumstances which constitute a manifest injustice to the
237 petitioner, the court may enter an order of expungement without conducting a hearing.

238 G. The Commonwealth shall be made party defendant to the proceeding. Any party aggrieved by the
239 decision of the court may appeal, as provided by law in civil cases.

240 H. Notwithstanding any other provision of this section, when the charge is dismissed because the
241 court finds that the person arrested or charged is not the person named in the summons, warrant,
242 indictment or presentment, the court dismissing the charge shall, upon motion of the person improperly
243 arrested or charged, enter an order requiring expungement of the police and court records relating to the

charge. Such order shall contain a statement that the dismissal and expungement are ordered pursuant to this subsection and shall be accompanied by the complete set of the petitioner's fingerprints filed with his petition. Upon the entry of such order, it shall be treated as provided in subsection K.

I. Notwithstanding any other provision of this section, upon receiving a copy pursuant to § 2.2-402 of an absolute pardon for the commission of a crime that a person did not commit, the court shall enter an order requiring expungement of the police and court records relating to the charge and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this subsection. Upon the entry of such order, it shall be treated as provided in subsection K.

J. Upon receiving a copy of a writ vacating a conviction pursuant to § 19.2-327.5 or 19.2-327.13, the court shall enter an order requiring expungement of the police and court records relating to the charge and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this subsection. Upon the entry of the order, it shall be treated as provided in subsection K.

K. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such order to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations adopted pursuant to § 9.1-134, direct the manner by which the appropriate expungement or removal of such records shall be effected.

L. Costs shall be as provided by § 17.1-275, but shall not be recoverable against the Commonwealth. ~~If the court enters an order of expungement, the clerk of the court shall refund to the petitioner such costs paid by the petitioner.~~

M. Any order entered where (i) the court or parties failed to strictly comply with the procedures set forth in this section or (ii) the court enters an order of expungement contrary to law, shall be voidable upon motion and notice made within three years of the entry of such order.