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HOUSE BILL NO. 563

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact §§ 2.2-3808.2, 17.1-225, and 17.1-279 of the Code of Virginia, relating to posting of court records on a website; personal information; sunset.

Patrons—Nixon, Cline, Landes and Lohr

Referred to Committee on Science and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3808.2, 17.1-225, and 17.1-279 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3808.2. Posting and availability of certain information on the Internet; prohibitions.

A. Beginning January 1, 2004, no court clerk shall post on a court-controlled website any document that contains the following information: (i) an actual signature; (ii) a social security number; (iii) a date of birth identified with a particular person; (iv) the maiden name of a person's parent so as to be identified with a particular person; (v) any financial account number or numbers; or (vi) the name and age of any minor child.

B. Each such clerk shall post notice that includes a list of the documents routinely posted on its website.

C. Nothing in this section shall be construed to prohibit access to any original document as provided by law.

D. This section shall not apply to the following:

1. Providing secure remote access to any document among the land records by means of a network or system that complies with security standards developed by the Virginia Information Technologies Agency in consultation with the circuit court clerks, the Executive Secretary of the Supreme Court, the Compensation Board, interested citizens, and users of land and other court records. Such standards shall include, but not be limited to, a requirement, as a precondition for access, for registration by users in person or by means of a notarized or otherwise sworn application that establishes the prospective user's identity, business or residence address, and citizenship status, *except that the clerk shall obfuscate from view through such secure remote access network or system any personal information enumerated in subsection A contained in a land record at the written request of the person who is a subject of the personal information or such person's legal guardian, and further, nothing herein shall be construed to allow the amendment or redaction of an original record as filed with the clerk and as available to the public at the clerk's office. Such obfuscation as required hereunder shall not be deemed the practice of law;*

2. Postings related to legitimate law-enforcement purposes;

3. Postings of historical, genealogical, interpretive, or educational documents and information about historic persons and events;

4. Postings of instruments and records filed or recorded prior to 1905; and

5. Providing secure remote access to any person and his counsel to documents filed in matters to which such person is a party.

E. As used in this section, "land records" means any writing authorized by law to be recorded on paper or in electronic format which the clerk records affecting title to real property.

F. Nothing in this section shall prohibit the Supreme Court or any other court from providing online access to a case management system which may include abstracts of case filings and proceedings in the courts of the Commonwealth.

G. The clerk of the circuit court of any jurisdiction shall be immune from suit arising from any acts or omissions relating to providing remote access on the Internet pursuant to this section unless the clerk was grossly negligent or engaged in willful misconduct.

This subsection shall not be construed to limit, withdraw or overturn any defense or immunity already existing in statutory or common law, or to affect any cause of action accruing prior to the effective date of this subsection.

H. ~~This section shall expire on July 1, 2007.~~

§ 17.1-225. Remote access to nonconfidential court records.

~~The~~Subject to the provisions of § 2.2-3808.2, the clerk of the circuit court of any county or city may provide remote access, including Internet access, to all nonconfidential court records maintained by his office and described in § 17.1-242. The clerk shall be responsible for insuring that proper security

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59 measures are implemented and maintained to prevent remote access users from obtaining any data that
60 are confidential under this Code and to prevent the modification or destruction of any records by remote
61 access users. For purposes of this section, remote access users are those individuals who are not
62 employees of the clerk's office.

63 § 17.1-279. Additional fee to be assessed by circuit court clerks for information technology.

64 A. In addition to the fees otherwise authorized by this chapter, the clerk of each circuit court shall
65 assess a \$5 fee, known as the "Technology Trust Fund Fee," in each civil action, upon each instrument
66 to be recorded in the deed books, and upon each judgment to be docketed in the judgment lien docket
67 book. Such fee shall be deposited by the State Treasurer into a trust fund. The State Treasurer shall
68 maintain a record of such deposits.

69 B. Four dollars of every \$5 fee shall be allocated by the Compensation Board from the trust fund for
70 the purposes of: (i) developing and updating individual land records automation plans for individual
71 circuit court clerks' offices; (ii) implementing automation plans to modernize land records in individual
72 circuit court clerks' offices and provide secure remote access to land records throughout the
73 Commonwealth; (iii) obtaining and updating office automation and information technology equipment
74 including software and conversion services; (iv) preserving, maintaining and enhancing court records,
75 including, but not limited to, the costs of repairs, maintenance, service contracts and system upgrades;
76 and (v) improving public access to court records. The Compensation Board in consultation with circuit
77 court clerks and other users of court records shall develop and update policies governing the allocation
78 of funds for these purposes. However, such funds shall not be used for personnel costs within the circuit
79 court clerks' offices. The Compensation Board policies governing the allocation of funds shall require
80 that a clerk submit to the Compensation Board a written certification that the clerk's proposed
81 technology improvements of his land records will accommodate secure remote access to those land
82 records on a statewide basis.

83 The annual budget submitted by each circuit court clerk pursuant to § 15.2-1636.7 may include a
84 request for technology improvements in the upcoming fiscal year to be allocated by the Compensation
85 Board from the trust fund. Such request shall not exceed the deposits into the trust fund credited to that
86 locality. The Compensation Board shall allocate the funds requested by the clerks in an amount not to
87 exceed the deposits into the trust fund credited to their respective localities.

88 C. The remaining \$1 of each such fee may be allocated by the Compensation Board from the trust
89 fund (i) for the purposes of funding studies to develop and update individual land-records automation
90 plans for individual circuit court clerks' offices, at the request of and in consultation with the individual
91 circuit court clerk's offices, and (ii) for the purposes enumerated in subsection B to implement the plan
92 to modernize land records in individual circuit court clerks' offices and provide secure remote access to
93 land records throughout the Commonwealth. The allocations pursuant to this subsection may give
94 priority to those individual clerks' offices whose deposits into the trust fund would not be sufficient to
95 implement its modernization plan. The Compensation Board policies governing the allocation of funds
96 shall require that a clerk submit to the Compensation Board a written certification that the clerk's
97 proposed technology improvements of his land records will accommodate secure remote access to those
98 land records on a statewide basis.

99 D. Secure remote access to land records shall be by paid subscription service through individual
100 circuit court clerk's offices pursuant to § 17.1-276, or through designated application service providers.
101 Compliance with security standards developed by the Virginia Information Technologies Agency
102 pursuant to § 2.2-3808.2 shall be certified by the individual circuit court clerks' offices to the Virginia
103 Information Technologies Agency and the Compensation Board. The individual circuit court clerk's
104 office or its designated application service provider shall certify compliance with such security standards.
105 Nothing in this section shall prohibit the Compensation Board from allocating trust fund money to
106 individual circuit court clerks' offices for the purpose of complying with such security standards.

107 E. Such fee shall not be assessed to any instrument to be recorded in the deed books nor any
108 judgment to be docketed in the judgment lien docket books tendered by any federal, state or local
109 government.

110 F. If a circuit court clerk has implemented an automation plan for his land records that will
111 accommodate secure remote access on a statewide basis, then that clerk may apply to the Compensation
112 Board for an allocation from the Technology Trust Fund for automation and technology improvements
113 in the civil divisions, or the criminal division, of his office. Such request shall not exceed the deposits
114 into the trust fund credited to that locality. The Compensation Board in approval of such application
115 shall consider what local funds have been spent by the jurisdiction to accelerate the implementation of
116 the technology plan approved by the Virginia Information Technologies Agency in each circuit court
117 clerk's office.

118 G. Information regarding the technology programs adopted by the circuit court clerks shall be shared
119 with the Virginia Information Technologies Agency, The Library of Virginia, and the Office of the
120 Executive Secretary of the Supreme Court.

121 H. Nothing in this section shall be construed to diminish the duty of local governing bodies to
122 furnish supplies and equipment to the clerks of the circuit courts pursuant to § 15.2-1656. Revenue
123 raised as a result of this section shall in no way supplant current funding to circuit court clerks' offices
124 by local governing bodies.

125 I. ~~It is the intent of the General Assembly that all circuit court clerks provide secure remote access to~~
126 ~~land records on or before July 1, 2006.~~

127 ~~J.~~ Effective July 1, 2006 2008, except for transfers pursuant to this section, there shall be no
128 transfers out of the fund, including transfers to the general fund.