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HOUSE BILL NO. 1284

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 10, 2012)

(Patron Prior to Substitute—Delegate Cline)

A *BILL to amend and reenact §§ 8.01-391, 8.01-431, 15.2-1412, 17.1-213, 20-25, 27-42, and 32.1-69.1:1 of the Code of Virginia and to repeal §§ 17.1-209, 20-14.2, and 38.2-2411 of the Code of Virginia, relating to certain duties of the circuit court clerk.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-391, 8.01-431, 15.2-1412, 17.1-213, 20-25, 27-42, and 32.1-69.1:1 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-391. Copies of originals as evidence.

A. Whenever the original of any official publication or other record has been filed in an action or introduced as evidence, the court may order the original to be returned to its custodian, retaining in its stead a copy thereof. The court may make any order to prevent the improper use of the original.

B. If any department, division, institution, agency, board, or commission of this Commonwealth, of another state or country, or of the United States, or of any political subdivision or agency of the same, acting pursuant to the law of the respective jurisdiction or other proper authority, has copied any record made in the performance of its official duties, such copy shall be as admissible into evidence as the original, whether the original is in existence or not, provided that such copy is authenticated as a true copy either by the custodian of said record or by the person to whom said custodian reports, if they are different, and is accompanied by a certificate that such person does in fact have the custody.

C. If any court or clerk's office of a court of this Commonwealth, of another state or country, or of the United States, or of any political subdivision or agency of the same, has copied any record made in the performance of its official duties, such copy shall be admissible into evidence as the original, whether the original is in existence or not, provided that such copy is authenticated as a true copy by a clerk or deputy clerk of such court.

D. If any business or member of a profession or calling in the regular course of business or activity has made any record or received or transmitted any document, and again in the regular course of business has caused any or all of such record or document to be copied, the copy shall be as admissible in evidence as the original, whether the original exists or not, provided that such copy is satisfactorily identified and authenticated as a true copy by a custodian of such record or by the person to whom said custodian reports, if they be different, and is accompanied by a certificate that said person does in fact have the custody. Copies in the regular course of business shall be deemed to include reproduction at a later time, if done in good faith and without intent to defraud. Copies in the regular course of business shall include items such as checks which are regularly copied before transmission to another person or bank, or records which are acted upon without receipt of the original when the original is retained by another party.

E. The original of which a copy has been made may be destroyed ~~in the regular course of business~~ unless its preservation is required by law, or its validity has been questioned.

~~EF.~~ The introduction in an action of a copy under this section ~~neither~~ precludes *neither* the introduction or admission of the original nor the introduction of a copy or the original in another action.

~~FG.~~ Copy, as used in this section, shall include photographs, microphotographs, photostats, microfilm, microcard, printouts or other reproductions of electronically stored data, or copies from optical disks, electronically transmitted facsimiles, or any other reproduction of an original from a process which forms a durable medium for its recording, storing, and reproducing.

§ 8.01-431. Judgment or decree by confession in pending suit.

In any suit a defendant may, whether the suit ~~be is~~ on the court docket or not, confess a judgment in the clerk's office for so much principal and interest as the plaintiff may be willing to accept a judgment or decree for. The same shall be entered of record by the clerk in the order book and be as final and as valid as if entered in court on the day of such confession. And the clerk shall enter upon the margin of such book opposite where such judgment or decree is entered, the date and time of the day at which the same was confessed, and the lien of such judgment or decree shall run from the time such judgment is recorded on the judgment lien docket of the clerk's office of the county or city in which land of the defendant lies. *The clerk may require that a separate instrument be prepared setting forth the necessary information and shall record and index such instrument according to law.*

§ 15.2-1412. Reproductions of records and documents and legal status thereof; destruction of originals.

Any locality may provide for the photographing or microphotographing, or the recording by any

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60 other process which accurately reproduces or forms a durable medium for reproducing the original of all
61 or any part of the papers, records, documents or other material kept by or in the charge of any
62 department, agency or institution of such locality in accordance with such standards and retention
63 schedules as may be issued in pursuance of § 42.1-82.

64 A reproduction thereof if substantially the same size as the original, when satisfactorily identified, is
65 as admissible in evidence as the original itself in any judicial or administrative proceeding whether the
66 original is in existence or not, and an enlargement or facsimile of such reproduction is likewise
67 admissible in evidence if the original reproduction is in existence and available for inspection under
68 direction of the court. The introduction of a reproduced record, enlargement or facsimile, does not
69 preclude admission of the original.

70 Whenever photographs or microphotographs have been made and put in conveniently accessible files,
71 and provision has been made for preserving, examining and using the same, the locality may notify the
72 Librarian of Virginia that it intends to destroy the records and papers so photographed or
73 microphotographed, or any part thereof. If within sixty days the Librarian of Virginia has not notified
74 the locality that such records or papers should be retained, the locality may destroy them. A locality
75 may also, in its discretion, consult with the locality's librarian with reference to the advisability of
76 destroying any such records, papers, documents or other material because of any historical significance
77 or value.

78 With the approval of the judge of the circuit court entered of record, the clerk of the circuit court
79 and the clerk of the district court, if directed to do so by the governing body, may microphotograph
80 records in their respective offices which are not required for current use. No record so
81 microphotographed shall be destroyed but may be stored in a safe place. The microphotograph or a
82 certified copy thereof shall have the same force and effect as the original record.

83 § 17.1-213. Disposition of papers in ended cases.

84 A. All case files for cases ended prior to January 1, 1913, shall be permanently maintained in
85 hardcopy form, either in the locality served by the circuit court where such files originated or in The
86 Library of Virginia in accordance with the provisions of § 42.1-86 and subsection C of § 42.1-87.

87 B. The following records for cases ending on or after January 1, 1913, ~~may be destroyed in their~~
88 ~~entirety at the discretion of the clerk of each circuit court after having been~~ *shall be* retained for 10
89 years after conclusion:

- 90 1. Conditional sales contracts;
- 91 2. Concealed weapons permit applications;
- 92 3. Minister appointments;
- 93 4. Petitions for appointment of trustee;
- 94 5. Name changes;
- 95 6. Nolle prosequi cases;
- 96 7. Civil actions that are voluntarily dismissed, including nonsuits, cases that are dismissed as settled
97 and agreed, cases that are dismissed with or without prejudice, cases that are discontinued or dismissed
98 under § 8.01-335, and district court appeals dismissed under § 16.1-113 prior to 1988;
- 99 8. Misdemeanor and traffic cases, except as provided in subdivision C 3, including those which were
100 commenced on a felony charge but concluded as a misdemeanor;
- 101 9. Suits to enforce a lien;
- 102 10. Garnishments;
- 103 11. Executions except for those covered in § 8.01-484;
- 104 12. Miscellaneous oaths and qualifications, but only if the order or oath or qualification is spread in
105 the appropriate order book; and
- 106 13. Civil cases pertaining to declarations of habitual offender status and full restoration of driving
107 privileges.

108 C. All other records or cases ending on or after January 1, 1913, ~~may be destroyed in their entirety~~
109 ~~at the discretion of the clerk of each circuit court shall be retained~~ subject to the following guidelines:

110 1. All civil case files to which subsection D does not pertain ~~may be destroyed after~~ *shall be*
111 *retained* 20 years from the court order date.

112 2. All criminal cases dismissed, including those not a true bill, acquittals, and not guilty verdicts,
113 ~~may be destroyed after~~ *shall be retained* 10 years from the court order date.

114 3. All criminal case files involving a felony conviction and all criminal case files involving a
115 misdemeanor conviction under § 16.1-253.2, 18.2-57.2, or 18.2-60.4 ~~may be destroyed~~ *shall be retained*
116 (i) after 20 years from the sentencing date or (ii) when the sentence term ends, whichever comes later.

117 D. Under the provisions of subsections B and C, the entire file of any case deemed by the local clerk
118 of court to have historical value, as defined in § 42.1-77, or genealogical or sensational significance shall
119 be retained permanently as shall all cases in which the title to real estate is established, conveyed or
120 condemned by an order or decree of the court. The final order for all cases in which the title to real
121 estate is so affected shall include an appropriate notification thereof to the clerk.

E. Except as provided in subsection A, the clerk of a circuit court may cause (i) any or all ~~ended~~ records, papers, or documents pertaining to civil and criminal cases which have been ~~ended~~ *imaged* for a period of three years or longer; (ii) any unexecuted search warrants and affidavits for unexecuted search warrants, provided at least three years have passed since issued; (iii) any abstracts of judgments; and (iv) original wills, to be destroyed if such records, papers, documents, or wills no longer have administrative, fiscal, historical, or legal value to warrant continued retention, provided such records, papers, or documents have been microfilmed or converted to an electronic format. Such microfilm and microphotographic processes and equipment shall meet state archival microfilm standards pursuant to § 42.1-82, or such electronic format shall follow state electronic records guidelines, and such records, papers, or documents so converted shall be placed in conveniently accessible files and provisions made for examining and using same. The clerk shall further provide security negative copies of any such microfilmed materials for storage in The Library of Virginia.

§ 20-25. Persons other than ministers who may perform rites.

Any Upon petition filed with the clerk and payment of applicable clerk's fees, any circuit court judge may issue an order authorizing one or more persons, resident in the circuit in which the judge sits, to celebrate the rites of marriage in the Commonwealth. Any person so authorized shall, before acting, enter into bond in the penalty of \$500, with or without surety, as the court may direct. Any order made under this section may be rescinded at any time.

Any judge or justice of a court of record, any judge of a district court or any retired judge or justice of the Commonwealth or any active, senior or retired federal judge or justice who is a resident of the Commonwealth may celebrate the rites of marriage anywhere in the Commonwealth without the necessity of bond or order of authorization.

§ 27-42. Definition of term "volunteer fire fighters."

For the purposes of this article the term "volunteer fire fighters" shall include only members of any organized fire-fighting company which has in its possession and operates fire-fighting apparatus and equipment, whose members serve without pay and whose names ~~have been duly certified by the secretary of such company as active members thereof to the clerk of the circuit court of the county or city as the case may be. The respective clerks shall keep a complete and accurate record of all names so certified in a book provided by the governing body of such county or city. Names shall be added to or stricken from such record upon the certificate of the secretary of any such company that such action has been decided by his organization in due form.~~ *are maintained on a list kept by the secretary of such company. It shall be the responsibility of the secretary of such company to (i) file the list with the office of the clerk of the circuit court where such company is located, (ii) keep the list of such members up to date, and (iii) file the updated list with the clerk in a timely manner. The clerk shall not be responsible to obtain the list or an updated list from the secretary of the fire-fighting company if the list is not filed with the clerk.*

§ 32.1-69.1:1. Dissemination of information regarding birth defects.

The Commissioner shall develop a publication concerning the role of folic acid in the prevention of birth defects for distribution to physicians, hospitals and other medical facilities, and local health departments for use with patients. ~~Such information shall also be provided to the clerks of county and city circuit courts for inclusion in health information required to be furnished to applicants for marriage licenses, pursuant to § 20-14.2. The publication shall be distributed by the Virginia Department of Health to the offices of the clerks of the circuit courts and made available to applicants for marriage licenses.~~

2. That §§ 17.1-209, 20-14.2, and 38.2-2411 of the Code of Virginia are repealed.