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SENATE BILL NO. 435

Offered January 8, 2014

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A *BILL to amend and reenact §§ 17.1-124, 17.1-225, 17.1-242, 17.1-243, 17.1-258.3, 17.1-279, and 17.1-293 of the Code of Virginia, relating to order books; automated systems; remote access to court records; electronic filing; information technology fees; posting of certain information on the Internet.*

Patron—McDougle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-124, 17.1-225, 17.1-242, 17.1-243, 17.1-258.3, 17.1-279, and 17.1-293 of the Code of Virginia are amended and reenacted as follows:

§ 17.1-124. Order books; automated systems.

Except as otherwise provided herein, each circuit court clerk shall keep order books *or, in lieu thereof, an automated system* recording all proceedings, orders and judgments of the court in all matters, all decrees, and decretal orders of such court and all matters pertaining to trusts, the appointment and qualification of trustees, committees, administrators, executors, conservators and guardians shall be recorded, except when the same are appointed by the clerk of court, in which event the order appointing such administrators or executors, shall be made and entered in the clerk's order book. In any circuit court, the clerk may, with the approval of the chief judge of the court, by order entered of record, divide the order book into two sections, to be known as the civil order book and the criminal order book. All proceedings, orders and judgments of the court in all matters at civil law shall be recorded in the civil order book, and all proceedings, orders and judgments of the court in all matters at criminal law shall be recorded in the criminal order book. In any proceeding brought for the condemnation of property, all proceedings, orders, judgments and decrees of the court shall be recorded in the civil order book of the court. The recordation prior to January 1, 1974, of all proceedings, orders, judgments and decrees in such cases, whether entered in the common-law order book or the chancery order book of any court, is hereby declared a valid and proper recordation of the same. Orders in cases appealed from the juvenile and domestic relations district courts shall be maintained as provided in this section and, to the extent inconsistent with this section, § 16.1-302.

The clerk shall ensure that these order books have been microfilmed or converted to or created in an electronic format. Such microfilm and microphotographic processes and equipment shall meet state microfilm standards, and such electronic format shall follow state electronic records guidelines, pursuant to § 42.1-82. The clerk shall further provide the master reel of any such microfilm for storage in the Library of Virginia and shall provide for the secured, off-site back up of any electronic copies of such records.

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

The clerk of the circuit court of any county or city may provide remote access, including Internet access, to all nonconfidential court records *on an automated case management or other system* maintained by his office and described in § 17.1-242. The clerk shall be responsible for insuring that proper security measures are implemented and maintained to prevent remote access users from obtaining any data that are confidential under this Code and to prevent the modification or destruction of any records by remote access users. For purposes of this section, remote access users are those individuals who are not employees of the clerk's office. Secure remote access to land records shall be governed by § 17.1-294.

§ 17.1-242. Custody of books, records, etc.

The circuit court clerks shall have custody of and shall keep all *court records, including books, evidence, records, maps, and papers, deposited in their offices or at such location otherwise designated by the clerk*, as well as records stored in electronic format whether the storage media for such electronic records are on premises or elsewhere.

§ 17.1-243. Clerks to have land books bound.

~~The circuit courts~~ *Except those clerks using an automated system, clerks* shall bind, in volumes of convenient size, all books in their respective clerks' offices not currently bound showing the assessments of lands since the year 1850, and shall bind in like volumes such books hereafter filed in their clerks' offices at intervals of not more than five years.

§ 17.1-258.3. Electronic filing in civil or criminal proceedings.

Any clerk of circuit court may establish and operate a system for electronic filing in civil or criminal

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proceedings that shall be governed by the Rules of the Supreme Court of Virginia. The circuit court clerk may require each person whom the clerk authorizes to file documents electronically to provide proof of identity to the clerk and to enter into an agreement specifying the electronic filing procedures to be followed, including, but not limited to, security procedures, as defined in the Uniform Electronic Transactions Act (§ 59.1-479 et seq.), for transmitting signed or notarized documents. The clerk may charge copy fees per page, as provided in subdivision A 8 of § 17.1-275, and obtain reimbursement for fees paid by subscribers to its designated application service providers for the technology systems used to operate electronic filing in civil and criminal cases in the clerk's office. The fees and reimbursements collected shall be deposited by the clerk into the clerk's nonreverting local fund to be used to cover operational expenses as defined in § 17.1-295. Nothing herein shall be construed to prevent the clerk from entering into agreements with designated application service providers to provide all or part of the network or system for electronic filing of civil or criminal records as provided herein. Further, nothing herein shall be construed to require the electronic filing of any civil or criminal record, and such records may continue to be filed in paper form.

Any clerk of circuit court with an electronic filing system established in accordance with the Rules of the Supreme Court of Virginia may charge an additional \$2 fee for every civil case initially filed by paper, except that a person who is determined to be indigent pursuant to § 19.2-159 shall be exempt from the payment of such fee. The fee shall be paid to the clerk's office and deposited by the clerk into the clerk's nonreverting local fund to be exclusively used to cover the operational expenses of the electronic filing system as defined in § 17.1-295.

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

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

B. Four dollars of every \$5 fee shall be allocated by the Compensation Board from the trust fund for the purposes of: (i) developing and updating individual land records automation plans for individual circuit court clerks' offices; (ii) implementing automation plans to modernize land records in individual circuit court clerks' offices and provide secure remote access to land records throughout the Commonwealth pursuant to § 17.1-294; (iii) obtaining and updating office automation and information technology equipment including software and conversion services; (iv) preserving, maintaining and enhancing court records, including, but not limited to, the costs of repairs, maintenance, land records, consulting services, service contracts, redaction of social security numbers from land records, and system replacements or upgrades; and (v) improving public access to court records. The Compensation Board in consultation with circuit court clerks and other users of court records shall develop and update policies governing the allocation of funds for these purposes. However, such funds shall not be used for personnel costs within the circuit court clerks' offices. The Compensation Board policies governing the allocation of funds shall require that a clerk submit to the Compensation Board a written certification that the clerk's proposed technology improvements of his land records will provide secure remote access to those land records on or before July 1, 2008.

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

C. The remaining \$1 of each such fee may be allocated by the Compensation Board from the trust fund (i) for the purposes of funding studies to develop and update individual land-records automation plans for individual circuit court clerks' offices, at the request of and in consultation with the individual circuit court clerk's offices, and (ii) for the purposes enumerated in subsection B to implement the plan to modernize land records in individual circuit court clerks' offices and provide secure remote access to land records throughout the Commonwealth. The allocations pursuant to this subsection may give priority to those individual clerks' offices whose deposits into the trust fund would not be sufficient to implement its modernization plan. The Compensation Board policies governing the allocation of funds shall require that a clerk submit to the Compensation Board a written certification that the clerk's proposed technology improvements of his land records will provide secure remote access to those land records on or before July 1, 2008.

D. 1. Secure remote access to land records shall be by paid subscription service through individual circuit court clerk's offices pursuant to § 17.1-276, or through designated application service providers. The clerk may require any entity that is a nonresident of the Commonwealth, prior to becoming a subscriber, to demonstrate that such entity is authorized to do business in Virginia and is in good standing with the State Corporation Commission or other applicable state or federal regulatory agency

and that such entity will comply with the secure remote access standards developed by the Virginia Information Technologies Agency pursuant to § 17.1-294. In the case of an individual, the clerk may require a person who is a nonresident of the Commonwealth to demonstrate that such person has a legal presence in Virginia and will comply with the secure remote access standards developed by the Virginia Information Technologies Agency pursuant to § 17.1-294. Compliance with secure remote access standards developed by the Virginia Information Technologies Agency pursuant to § 17.1-294 shall be certified by the individual circuit court clerks' offices to the Compensation Board. The individual circuit court clerk's office or its designated application service provider shall certify compliance with such secure remote access standards. *Nothing in this section shall prohibit the clerk from entering into a subscriber agreement with an agency of the Commonwealth and delegating the responsibility for compliance with such secure remote access standards to such agency.* Nothing in this section shall prohibit the Compensation Board from allocating trust fund money to individual circuit court clerks' offices for the purpose of complying with such secure remote access standards or redaction of social security numbers from land records.

2. Every circuit court clerk shall provide secure remote access to land records pursuant to § 17.1-294 on or before July 1, 2008.

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

F. If such an application includes automation or technology improvements that would require an interface with the case management system or the financial management system operated and maintained by the Executive Secretary of the Supreme Court for the purpose of providing electronic information to state agencies in accordance with § 17.1-502, the circuit court clerk, or the court's designated application service provider, shall certify to the Compensation Board that such automation or technology improvements will comply with the security and data standards of the systems operated and maintained by the Executive Secretary of the Supreme Court.

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

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

I. Effective July 1, 2006, except for transfers pursuant to this section, there shall be no transfers out of the Technology Trust Fund, including transfers to the general fund.

§ 17.1-293. Posting and availability of certain information on the Internet; prohibitions.

A. Notwithstanding Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 or subsection B, it shall be unlawful for any court clerk to disclose the social security number or other identification numbers appearing on driver's licenses or information on credit cards, debit cards, bank accounts, or other electronic billing and payment systems that was supplied to a court clerk for the purpose of paying fees, fines, taxes, or other charges collected by such court clerk. The prohibition shall not apply where disclosure of such information is required (i) to conduct or complete the transaction for which such information was submitted or (ii) by other law or court order.

B. Beginning January 1, 2004, no court clerk shall post on the Internet 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.

C. Each such clerk shall post notice that includes a list of the documents routinely posted on its website. However, the clerk shall not post information on his website that includes private activity for private financial gain.

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

E. This section shall not apply to the following:

1. Providing access to any document among the land records via secure remote access pursuant to § 17.1-294;

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 1907~~ that are more than 100 years old;

182 5. Providing secure remote access to any person, his counsel, or staff which counsel directly
183 supervises to documents filed in matters to which such person is a party;

184 6. Providing official certificates and certified records in digital form of any document maintained by
185 the clerk pursuant to § 17.1-258.3:2; and

186 7. Providing secure remote access to nonconfidential court records, subject to any fees charged by
187 the clerk, to members in good standing with the Virginia State Bar and their authorized agents, pro hac
188 vice attorneys authorized by the court for purposes of the practice of law, and such governmental
189 agencies as authorized by the clerk.

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

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

196 This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity
197 already existing in statutory or common law, or to affect any cause of action accruing prior to July 1,
198 2005.

199 H. Nothing in this section shall be construed to permit any data accessed by secure remote access to
200 be sold or posted on any other website or in any way redistributed to any third party, and the clerk, in
201 his discretion, may deny secure remote access to ensure compliance with these provisions. However, the
202 data accessed by secure remote access may be included in products or services provided to a third party
203 of the subscriber provided that (i) such data is not made available to the general public and (ii) the
204 subscriber maintains administrative, technical, and security safeguards to protect the confidentiality,
205 integrity, and limited availability of the data.