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HOUSE BILL NO. 2048

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice on February 23, 2015)

(Patron Prior to Substitute—Delegate Bell, Robert B.)

A BILL to amend and reenact §§ 8.01-600 and 8.01-606 of the Code of Virginia, relating to payment of funds into general district court or circuit court.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-600 and 8.01-606 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-600. How money under control of court deposited; record kept; liability of clerk.

A. This section pertains only to money held by the clerk of the circuit court, when the court orders moneys to be held by the clerk pursuant to this section. Where judgment is taken in the circuit court, upon motion of a party for good cause shown, the court may enter an order directing the clerk to hold moneys pursuant to this section. The clerk shall have the duty, unless it is otherwise specially ordered, to receive, take charge of, hold or invest in such manner as the court orders and also to pay out or dispose of these moneys as the court orders or decrees. To this end, the clerk is authorized to verify, receive, and give acquittances for all such moneys as the court may direct.

B. Orders creating funds pursuant to this section or § 8.01-582 shall include information necessary to make prudent investment and disbursement decisions. The orders shall include, except when it is unreasonable, the proposed dates of periodic and final disbursements. Prior to the entry of the order, the beneficiary or his representative shall file an affidavit with the court providing the beneficiary's name, date of birth, address and social security number. The affidavit shall be maintained under seal by the clerk unless otherwise ordered by the court, and the information therein shall be used solely for the purposes of financial management and reporting.

Unless otherwise ordered by the court, the provisions of this section shall not apply to:

1. Cash or other money received in lieu of surety on any bond posted in any civil or criminal case, including but not limited to bail bonds, appeal bonds in appeals from a district court or circuit court, bonds posted in connection with the filing of an attachment, detinue seizure or distress, suspending bonds, and performance bonds;

2. Cash or other money paid or deposited in the clerk's office prior to final disposition of the case, including but not limited to interpleaders or eminent domain; or

3. Cash or other money deposited in lieu of surety on any bond posted in the clerk's office which is not posted in connection with any civil or criminal case, including bonds posted by executors or administrators.

C. All deposits under this section shall be secured in accordance with the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.).

D. Moneys held pursuant to this section shall be invested in certificates of deposit and time deposits, and in accordance with the provisions of Chapter 45 (§ 2.2-4500 et seq.) of Title 2.2 as ordered by the court.

E. Any interest which accrues on the funds, minus allowable fees and bond costs, shall be credited and payable to the person or persons entitled to receive such funds. The court may order the clerk to consolidate for investment purposes money received under this section, with income received hereunder to be apportioned among the several accounts.

F. Except as otherwise ordered by the court, for good cause shown, the clerk shall be liable for any loss of income which results from his (i) failure to invest the money within sixty days of the court order creating the fund or (ii) failure to pay out any money so ordered by the court within sixty days of the court order. He shall be charged with interest from the date of the court order until such investment or payment is made.

G. The clerk shall keep an accurate and particular account of all moneys received, invested, and paid out by him, showing the respective amounts to the credit of each case in the court and designating in the items the judgments, orders or decrees of court under which the respective sums have been received, invested or paid out. At least annually and no later than October 1 of each year, the clerk shall make a report to the court showing the balance to the credit of each case in the court in which money has been received by him, the manner in which money has been received by him, the manner in which it is invested, the amounts received, invested or paid out during the year ending June 30 of the current year, the approximate date on which the moneys held for the beneficiaries will become payable, and the whole amount then invested and subject to the future order of the court. A copy of this report shall be recorded in the trust fund order book. The clerk shall, at any time when required by the court or the Auditor of Public Accounts to do so, furnish a statement of the amount subject to the order of the court

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60 in any case pending therein and any other information required by the court or the Auditor of Public
61 Accounts as to any money or other property under his control before the court. When the clerk receives
62 funds under this section, he shall be entitled to receive fees in accordance with § 17.1-287 in the
63 amounts as specified for general receivers in § 8.01-589.

64 H. All moneys received under this section are subject to audit by the Auditor of Public Accounts.

65 **§ 8.01-606. Payment of small amounts to certain persons through court without intervention of**
66 **fiduciary; authority of commissioners of accounts; certain fiduciaries exempt from accountings.**

67 A. Whenever there is due to any person, any sum of money from any source, not exceeding \$25,000,
68 the fund may be paid into the circuit court of the county or city in which the fund became due or such
69 person resides. The court may, by an order entered of record, (i) pay the fund to the person to whom it
70 is due, if the person is considered by the court competent to expend and use the same in his behalf, or
71 (ii) pay the fund to some other person who is considered competent to administer it, for the benefit of
72 the person entitled to the fund, without the intervention of a fiduciary, whether the other person resides
73 within or without this Commonwealth. The clerk of the court shall take a receipt from the person to
74 whom the money is paid, which shall show the source from which it was derived, the amount, to whom
75 it belongs, and when and to whom it was paid. The receipt shall be signed and acknowledged by the
76 person receiving the money, and entered of record in the book in the clerk's office in which the current
77 fiduciary accounts are entered and indexed. Upon the payment into court the person owing the money
78 shall be discharged of such obligation. No bond shall be required of the party to whom the money is
79 paid by the court.

80 B. Whenever (i) it appears to the court having control of a fund, tangible personal property or
81 intangible personal property or supervision of its administration, whether a suit is pending therefor or
82 not, that a person under a disability who has no fiduciary, is entitled to a fund arising from the sale of
83 lands for a division or otherwise, or a fund, tangible personal property or intangible personal property as
84 distributee of any estate, or from any other source, (ii) a judgment, decree, or order for the payment of a
85 sum of money or for delivery of tangible personal property or intangible personal property to a person
86 under a disability who has no fiduciary is rendered by any court, and the amount to which such person
87 is entitled or the value of the tangible personal property or intangible personal property is not more than
88 \$25,000, or (iii) a person under a disability is entitled to receive payments of income, tangible personal
89 property or intangible personal property and the amount of the income payments is not more than
90 \$25,000 in any one year, or the value of the tangible personal property is not more than \$25,000, or the
91 current market value of the intangible personal property is not more than \$25,000, the court may,
92 without the intervention of a fiduciary, cause such fund, property or income to be paid or delivered to
93 any person deemed by the court capable of properly handling it, to be used solely for the education,
94 maintenance and support of the person under a disability. In any case in which an infant is entitled to
95 such fund, property or income, the court may, upon its being made to appear that the infant is of
96 sufficient age and discretion to use the fund, property or income judiciously, cause the fund to be paid
97 or delivered directly to the infant.

98 C. *Where judgment is taken in the general district court, upon motion of a party for good cause*
99 *shown, the general district court judge may enter an order directing the clerk of the general district*
100 *court to hold such funds in escrow for a period not to exceed 180 days to enable such party to file a*
101 *petition pursuant to § 8.01-600 requesting that such funds be received and held by the clerk of the*
102 *circuit court upon payment of fees in accordance with § 17.1-275. The party petitioning the circuit court*
103 *shall provide the clerk of the general district court a certified copy of any order entered by the circuit*
104 *court directing that such funds held by the clerk of the general district court be transferred to the clerk*
105 *of the circuit court. If no such order is received by the clerk of the general district court within the*
106 *180-day period, the clerk of the general district court shall give notice to the parties that such funds*
107 *shall be disbursed to the plaintiff for which judgment was entered in the general district court within 30*
108 *days after such notice.*

109 D. Whenever a person is entitled to a fund or such property distributable by a fiduciary settling his
110 accounts before the commissioner of accounts of the court in which the fiduciary qualified, and the
111 amount or value of the fund or property, or the value of any combination thereof, is not more than
112 \$25,000, the commissioner of accounts may approve distribution thereof in the same manner and to the
113 extent of the authority herein conferred upon a court including exemption from filing further accounts
114 where the value of the fund being administered is less than \$25,000.

115 ~~D.~~ E. Whenever an incapacitated person or infant is entitled to a fund or such property distributable
116 by a fiduciary settling accounts before the commissioner of accounts of the court in which the fiduciary
117 qualified and the will or trust instrument under which the fiduciary serves, authorizes the fiduciary to
118 distribute the property or fund to the incapacitated person or infant without the intervention of a
119 guardian, conservator or committee, and the amount or value of such fund or property, or the value of
120 any combination thereof, is not more than \$25,000, the commissioner of accounts may approve
121 distribution thereof in the same manner and to the extent of the authority hereinabove conferred upon a

122 court or judge thereof.

123 *E. F.* Whenever a fiduciary is administering funds not exceeding \$25,000, the circuit court of the
124 county or city in which the fund is being administered by order entered of record may authorize the
125 fiduciary, when considered competent to administer the funds, to continue to administer the funds for
126 the benefit of the person entitled to the fund without the necessity of filing any further accounts,
127 whether such person resides within or without this Commonwealth. The clerk of the court shall take a
128 receipt from the fiduciary, which shall show the amount of the fund remaining, to whom it belongs, and
129 the date the court entered the order exempting the filing of further accounts. The receipt shall be signed
130 and acknowledged by the fiduciary, and entered of record in the book in the clerk's office in which the
131 current fiduciary accounts are entered and indexed. No surety shall be required on the bond of a
132 fiduciary granted an exemption from filing any further accounts.