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HOUSE BILL NO. 1630

Offered January 11, 2017

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A BILL to amend and reenact §§ 8.01-600, 17.1-124, and 17.1-125 of the Code of Virginia, relating to report of money kept by clerk; money held recorded in civil law book; recording in the order book.

 Patron—Habeeb

 Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-600, 17.1-124, and 17.1-125 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, *which shall include the chief judge of the circuit or the resident judge*, 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,

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59 invested or paid out during the year ending June 30 of the current year, the approximate date on which
60 the moneys held for the beneficiaries will become payable, and the whole amount then invested and
61 subject to the future order of the court. *The clerk shall make a copy of such report available to the*
62 *Auditor of Public Accounts for purposes of audit.* A copy of this report shall be recorded in the trust
63 fund order book. The clerk shall, at any time when required by the court or the Auditor of Public
64 Accounts to do so, furnish a statement of the amount subject to the order of the court in any case
65 pending therein and any other information required by the court or the Auditor of Public Accounts as to
66 any money or other property under his control before the court. When the clerk receives funds under
67 this section, he shall be entitled to receive fees in accordance with § 17.1-287 in the amounts as
68 specified for general receivers in § 8.01-589.

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

70 **§ 17.1-124. Order books; automated systems.**

71 Except as otherwise provided herein, each circuit court clerk shall keep order books or, in lieu
72 thereof, an automated system recording all proceedings, orders and judgments of the court in all matters,
73 all decrees, and decretal orders of such court and all matters pertaining to trusts, the appointment and
74 qualification of trustees, committees, administrators, executors, conservators and guardians shall be
75 recorded, except when the same are appointed by the clerk of court, in which event the order appointing
76 such administrators or executors, shall be made and entered in the clerk's order book. In any circuit
77 court, the clerk may, with the approval of the chief judge of the court, by order entered of record,
78 divide the order book into two sections, to be known as the civil order book and the criminal order
79 book. All (i) proceedings, orders, and judgments of the court in all matters at civil law and (ii) *trust*
80 *fund orders, which shall include money held by a general receiver of the court pursuant to § 8.01-582*
81 *or by the clerk of the circuit court pursuant to § 8.01-600,* shall be recorded in the civil order book, and
82 all proceedings, orders and judgments of the court in all matters at criminal law shall be recorded in the
83 criminal order book. In any proceeding brought for the condemnation of property, all proceedings,
84 orders, judgments and decrees of the court shall be recorded in the civil order book of the court. The
85 recordation prior to January 1, 1974, of all proceedings, orders, judgments and decrees in such cases,
86 whether entered in the common-law order book or the chancery order book of any court, is hereby
87 declared a valid and proper recordation of the same. Orders in cases appealed from the juvenile and
88 domestic relations district courts shall be maintained as provided in this section and, to the extent
89 inconsistent with this section, § 16.1-302.

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

96 **§ 17.1-125. Trust fund order book.**

97 ~~There shall be kept in the office of the clerk of every circuit court an order book to be known as the~~
98 ~~trust fund order book, The clerk shall record (i) trust fund orders pursuant to §§ 17.1-123 and 17.1-124~~
99 ~~and (ii) the annual trust fund report required pursuant to subsection G of § 8.01-600 in a book known~~
100 ~~as the civil order book, in which shall be recorded all reports, orders, and decrees concerning moneys~~
101 ~~received or to be received by general receivers pursuant to § 8.01-582 and by clerks pursuant to~~
102 ~~§ 8.01-600. Recording of orders and decrees pursuant to this section shall be in addition to, and not in~~
103 ~~lieu of, any recording otherwise required by statute.~~