

MEMORANDUM

June 19, 2009

To: The Boyd-Graves Conference

From: Committee for the Study of Dollar-Based Provisions in the Virginia Code

Re: Report and Recommendations of the Committee

A. Introduction

The Boyd-Graves Conference Committee for the Study of Dollar-Based Provisions in the Virginia Code consists of the following members: Prof. Benjamin Spencer (Chair), Frmr. Senator Bob Calhoun, Senator John Edwards, Steve Emmert, Judge Bill Ledbetter, Ken Montero, and Ann Sullivan. Our committee's charge was "to review the Virginia Code to determine which sections with dollar-based provisions may be in need of updating." We understood this mandate to be limited to those code provisions that pertained to litigation in some way.

B. Review Process

To identify all of the relevant provisions for review, our process was as follows: David Cotter, staff attorney for Virginia Division of Legislative Services (DLS), took "\$", "dollar" and "dollars" and ran them against the DLS database of 2008 Virginia statutes, yielding 2,543 hits (statutes containing one or more of these terms). He then manually reviewed those statutes that appeared to contain "fee", "fine" or "penalty", to exclude those with these terms that clearly were outside the scope of the research project (statutes dealing with civil litigation). This left over 2,000 statutes to be examined. David Cotter then sorted them by title, and provided a copy of those statutes on CD. Ken Montero took these remaining statutes and manually reviewed each of them, title by title, to select those that were involved potentially in the civil litigation process. This review process winnowed down the corpus to 195 statutes (still organized by title) to be reviewed by the committee. Ken Montero gave a CD of this product to David Cotter, who then produced a companion CD that contained any 2009 statutory changes to these 195 statutes. Both of these products were then give to the Chairman, Benjamin Spencer. The Chair then assigned each of the statutes to various committee members for review and initial recommendations. Those recommendations were considered by the entire committee and consensus was reached on the matters discussed below.

C. Recommendations

All of the following titles of the Virginia Code were found to have potentially relevant provisions containing dollar amounts and were reviewed by the committee: Titles 2.2, 3.2, 6.1, 8.01, 8.2, 8.2A, 8.4, 8.6A, 8.7, 8.9A, 10.1, 11, 12.1, 13.1, 15.2, 16.1, 17.1, 18.2, 19.2, 20, 21, , 24.2, , 25.1, 26, 31, 32.1, 34, 35.1, 36, 37.2, 38.2, 41.1, 42.1, 43, 45, 46.2, 49, 51.5, 54.1, 55, 56, 58.1, 59.1, 63.2, and 64.1. After reviewing each of these provisions of the Code, this committee makes the following recommendations:

1. Proposed Amendments to the Virginia Code¹

- **§ 6.1-118.1. Recovery of costs in civil actions for bad checks.** In any civil action by a holder to recover the sum payable of a check drawn by the defendant on which payment has been refused by the payor bank because the drawer had no account or insufficient funds, or in any civil action following an arrest under § 18.2-181 or § 18.2-182, the court, upon a determination that the plaintiff has prevailed, shall add the following amounts, as costs, to the amount due to the plaintiff for the check: (i) the sum of ~~ten~~thirty dollars to defray the cost of processing the returned check . . . [adjusted to approximate current actual costs]
- **§ 8.01-66. Recovery of damages for loss of use of vehicle.** B . . . If the trial court finds that an action brought against an insurance company or any self-insured company under subsection B of this section is frivolous, or not to have been brought in good faith, the court may in its discretion require the plaintiff to pay the reasonable attorney's fees, not to exceed ~~\$200~~350, incurred by the defendant in defending the action. . . . [adjusted for inflation (1987)]
- **§ 8.01-66.2. Lien against person whose negligence causes injury.** Whenever any person sustains personal injuries caused by the alleged negligence of another and receives treatment in any hospital, public or private, or nursing home, or receives medical attention or treatment from any physician, or receives nursing service or care from any registered nurse, or receives physical therapy treatment from any registered physical therapist in this Commonwealth, or receives medicine from a pharmacy, or receives any ambulance service, such hospital, nursing home, physician, nurse, physical therapist, pharmacy or ambulance service shall each have a lien for the amount of a just and reasonable charge for the service rendered, but not exceeding ~~\$2,000~~2,500 in the case of a hospital or nursing home, ~~\$500~~750 for each physician, nurse, physical therapist, or pharmacy, and \$200 for each ambulance service on the claim of such injured person or of his personal representative against the person, firm or corporation whose negligence is alleged to have caused such injuries. [adjusted for inflation (1995)]
- **§ 8.01-416. Affidavit re damages to motor vehicle.** A. In a civil action in any court, whether sounding in contract or tort, to recover for damages to a motor vehicle in excess of ~~\$1,000~~2,500, evidence as to such damages may be presented by an itemized estimate or appraisal sworn to by a person who also makes oath . . . Such estimate shall not be admitted unless by consent of the adverse party or his counsel, or unless a true copy thereof is mailed or delivered to the adverse party or his counsel not less than seven days prior to the date fixed for trial. B. In a civil action in any court, whether sounding in contract or tort, to recover for damages to a motor vehicle of ~~\$1,000~~2,500 or less, evidence as to such damages may be presented by an itemized estimate or appraisal sworn to by a person who also makes oath. . . . [adjusted for inflation (1980)]
- **§ 8.01-504. Penalty for service of notice of lien when no judgment exists.** Whoever causes to be served a notice of lien of a writ of fieri facias without there being a judgment against the defendant named therein, shall pay to him the sum of ~~\$400~~350, and whoever serves a notice of lien of a writ of fieri facias before the issuance of a writ of fieri facias, or after the return day thereof, or serves or in any way gives a notice of a lien of fieri facias by means other than by service by an officer authorized to serve civil process, shall pay to the named defendant the sum of ~~\$400~~350, to be recoverable as damages in an action at law, in addition to whatever damages may be alleged and proven. [adjusted for inflation (1977)]

¹ Bracketed information provides the rationale for the change.

- **§ 8.01-512.2. Fee for garnishee-employers.** Garnishee-employers may charge and collect a fee of up to ~~ten~~twenty-five dollars from a judgment-debtor employee on account of such employers' expense in processing each garnishment summons served on such employers on account of the judgment-debtor employee. [adjusted for inflation (1980)]
- **§ 8.01-672. Jurisdictional amount.** No petition shall be presented for an appeal from any judgment of a circuit court except in cases in which the controversy is for a matter of ~~\$500~~2000 or more in value or amount, and except in cases in which it is otherwise expressly provided; nor to a judgment of any circuit court when the controversy is for a matter less in value or amount than ~~\$500~~2000, exclusive of costs, unless there be drawn in question a freehold or franchise or the title or bounds of land, or some other matter not merely pecuniary. [adjusted for inflation (1977) plus rounding up to proposed figure]
- **§ 8.01-676.1. Security for appeal. A. Security for costs of appeal of right to Court of Appeals.** A party filing a notice of an appeal of right to the Court of Appeals shall simultaneously file an appeal bond or irrevocable letter of credit in the penalty of ~~\$500~~1,000, or such sum as the trial court may require . . . [adjusted to account for the increase in recoverable appellate costs proposed herein]
- **§ 8.01-682. What damages awarded appellee.** When any judgment is affirmed, damages shall be awarded to the appellee. Such damages, when the judgment is for the payment of money, shall be the interest to which the parties are legally entitled, from the time the appeal took effect, until the affirmance. Such interest shall be computed upon the whole amount of the recovery, including interest and costs, and such damages shall be in satisfaction of all interest during such period of time. When the judgment is not for the payment of any money, except costs, the damages shall be such specific sum as the appellate court may deem reasonable, not being more than ~~\$100~~2500 nor less than ~~\$30~~750. [adjusted for inflation (1849)]
- **§ 8.2-201. Formal requirements; statute of frauds.** (1) Except as otherwise provided in this section a contract for the sale of goods for the price of ~~\$500~~5000 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. . . . [adopted in 1964; adjusted to match UCC amount].
- **§ 16.1-105. Attachments.** [I]f an attachment is returned executed and the defendant has not been served with a copy thereof, and the amount claimed in the attachment does not exceed ~~\$300~~1000, exclusive of interest and any attorney's fees contracted for in the instrument, the judge or clerk of the court, . . . shall forthwith cause a copy of the attachment to be posted at the front door of the courthouse of the county or the front door of the courtroom of the city or town wherein the attachment was issued If the amount claimed in the attachment is more than ~~\$300~~1000, exclusive of interest and any attorney's fees contracted for in the instrument, an order of publication shall be entered and published [Inflation adjustment would be \$2351.91; proposed figure was deemed to be a less dramatic change]
- **§ 17.1-605. [Costs in appellate courts]; printing or otherwise reproducing brief and appendix.** Any party in whose favor costs are allowed in the Supreme Court shall have taxed as part of the costs the actual cost incurred by him in printing or otherwise any brief filed with the Court, not to exceed ~~\$200~~500 for all briefs filed and the actual cost incurred by him in printing or otherwise reproducing the appendix containing parts of the record filed with the Court, except that the Court for good cause may direct that such party shall recover less than the entire cost incurred by him in printing or otherwise reproducing (i) briefs filed by him

(even though less than ~~\$200~~500) or (ii) the appendix. [adjustment for inflation would be \$1100 (1977); proposed figure deemed a more reasonable increase]

- **§ 19.2-69. Civil action for unlawful interception, disclosure or use.** Any person whose wire, electronic or oral communication is intercepted, disclosed or used in violation of this chapter shall (i) have a civil cause of action against any person who intercepts, discloses or uses, or procures any other person to intercept, disclose or use such communications, and (ii) be entitled to recover from any such person: 1. Actual damages but not less than liquidated damages computed at the rate of ~~\$100~~400 a day for each day of violation or ~~\$1,000~~4,000, whichever is higher . . . [adjusted for inflation (1975)].
- **§ 21-186. Appeal from action fixing fees, etc.** From any action of the sanitation commission in prescribing fees, rents and charges, or either of them, pursuant to the provisions of this chapter, an appeal may be taken upon the petition of any county or city constituting a part of the district, or upon petition of any fifty persons, resident or doing business in the district, to the State Corporation Commission. . . . After such petition shall have been filed with the State Corporation Commission and after such county or city or other petitioners shall have, if required by the State Corporation Commission, executed and filed with the State Corporation Commission a bond payable to the Commonwealth and sufficient in amount, but not in excess of ~~\$500~~5,000, and security to insure the prompt payment of all costs which may be assessed against such county or city or other petitioners . . . [adjustment for inflation would be around \$6500. Reduced to proposed amount for less dramatic increase to a round figure].
- **§ 38.2-807. Attorney fees.** A. In any action against an unlicensed insurer upon an insurance contract issued or delivered in this Commonwealth to a resident of this Commonwealth or to a corporation authorized to do business in this Commonwealth, the court may allow the plaintiff a reasonable attorney fee . . . The fee shall not exceed 12 1/2 percent of the amount that the court or jury finds the plaintiff is entitled to recover against the insurer, but shall be at least ~~\$100~~200. [adjusted for inflation (1986)]
- **§ 43-3. Lien for work done and materials furnished; waiver of right to file or enforce lien.** All persons performing labor or furnishing materials of the value of ~~\$50~~300 or more, including the reasonable rental or use value of equipment, for the construction, removal, repair or improvement of any building or structure permanently annexed to the freehold, and all persons performing any labor or furnishing materials of like value for the construction of any railroad, shall have a lien, if perfected as hereinafter provided, upon such building or structure, and so much land therewith as shall be necessary for the convenient use and enjoyment thereof, and upon such railroad and franchises for the work done and materials furnished . . . [adjusted for inflation (1968)]
- **§ 43-24. Liens of employees, suppliers, etc.** All conductors, brakemen, engine drivers, firemen, captains, stewards, pilots, clerks, depot or office agents, storekeepers, mechanics, traveling representatives or laborers, and all persons furnishing railroad iron, engines, cars, fuel and all other supplies necessary to the operation of any railway, canal or other transportation company, and all clerks, mechanics, traveling representatives, foremen, and laborers, and superintendents to the extent of not more than ~~twenty-five~~\$100 dollars per week, . . . shall have a prior lien on the franchises, gross earnings and on all the real and personal property of such individual, partnership, unincorporated association or company which is used in operating the same, to the extent of the moneys due them . . . [adjustment for inflation would be roughly \$400 (1932); reduced to proposed amount to preserve broader access to the lien]

- **§ 46.2-364. Definitions.** For the purposes of this chapter . . . "Judgment" means any judgment for ~~\$200~~**350** or more arising out of (i) a civil action filed pursuant to § 15.2-1716 [against DUI offenders] or (ii) a motor vehicle accident . . . [adjusted for inflation (1989)]
- **§ 46.2-601. Appointment of Commissioner agent for service of process.** Each nonresident owner of a motor vehicle, trailer, or semitrailer applying for the registration thereof in the Commonwealth shall file with the application a duly executed instrument, constituting the Commissioner and his successors in office his attorney on whom all lawful process against and notice to the owner may be served in any action or legal proceeding brought as the result of the operation or use of any motor vehicle, trailer, or semitrailer registered by or for him, in the Commonwealth; and therein shall agree that any process against or notice to the owner shall have the same effect as if served on the owner within the Commonwealth. The service of the process or notice shall be made by leaving a copy of it in the office of the Commissioner with a service fee of ~~three dollars~~**in the amount prescribed in § 2.2-409** to be taxed as a part of the costs of the suit. [This statute provides for service of process on non-resident *owners* of vehicles registered in Virginia, mandating a \$3 fee that was set in 1932. In contrast, when the Commissioner of Motor Vehicles serves as agent for service of process on non-resident *operators* under Va. Code § 8.01-308, the fee for such service of process is \$28. This fee is set out in Va. Code § 8.01-310, which incorporates by reference Va. Code § 2.2-409 setting the fee for the Secretary of the Commonwealth serving as agent for service of process: Secretary of the Commonwealth -- \$28.00 per defendant. The "agent for service of process" fee charged by the Commissioner of Motor Vehicles should be the same for non-resident owners and operators.]
- **§ 58.1-3959. Petition to ascertain delinquent taxes; exoneration from lien.** Any person interested in real estate may file a petition in the circuit court of the county or city wherein the assessment of taxes was made, for the purpose of having ascertained any and all delinquent taxes due upon such real estate or any delinquent taxes imposed . . . The clerk shall be entitled to a fee of ~~one ten~~**ten** dollars which, together with other costs, including such fee as the court may deem proper to allow the commissioner in chancery, shall be paid by the petitioner. [adjusted for inflation (1950), then rounded up to the proposed amount]

2. Proposal to Abolish a Code Provision

- **§ 17.1-624. Who to tax costs; what included for attorney's fee.** This provision reads as follows: "The clerk of the court wherein any party recovers costs shall tax the same. He shall include therein for the fee of such party's attorney, if he has one: 1. In a case of the Commonwealth, if no higher fee is allowed \$5.00; 2. In a chancery cause other than a motion, when the matter in controversy exceeds \$100 in amount or value \$ 15.00; 3. In the Court of Appeals \$ 50.00 4. In the Supreme Court \$ 50.00. In no case shall more than one fee be taxed against the same party, unless the court otherwise directs." The committee felt that these are token amounts that run counter to the Commonwealth's supposed commitment to the American Rule. We recommend that the Conference propose abolishing this section.

3. Referrals to New Study Committees

- **Punitive Damages Limitation.** The Boyd-Graves Conference Steering Committee should appoint separate committee to study whether § 8.01-38.1 should be amended to raise the current **\$350,000** punitive damages cap to account for inflation since the time the current

figure was set, which was 1987. Adjusting for inflation, the amount in today's dollars would be over **\$655,000**.

- **Proceeds from Disposition of Lands of One Under a Disability.** §8.01-76 permits payment of small sums (under **\$4,000**) directly to a caretaker, and §8.01-85 requires court approval of proceeds exceeding **\$2,500**; §8.01-424 requires court approval for settlements, and contains the same **\$4,000** limit. These figures are significantly out of date but there are serious policy considerations underlying the provisions that would need to be factored into any change. The Steering Committee should appoint a new study committee to determine whether these figures should be updated.
- **Tort Claims Act.** Under § 8.01-195.3 the current ceiling on claims against the Commonwealth is **\$100,000**. This figure was set in 1988 and would be **\$180,000** in today's dollars if adjusted for inflation. Adjusting the figure in for inflation would involve complex policy considerations and would warrant consultation with relevant representatives of the Commonwealth. Thus, the Steering Committee should appoint separate committee to study whether § 8.01-195.3 should be amended to raise the ceiling on claims against the Commonwealth.
- **Enforcement of Liens.** Under § 8.01-463, "If the amount of the judgment does not exceed **twenty dollars**, exclusive of interest and costs, no bill to enforce the lien thereof shall be entertained. . . ." This figure is out of date but adjusting it would involve policy considerations and inquiry into the costs of execution. Thus, the Steering Committee should appoint separate committee to study whether § 8.01-463 should be amended to increase this figure.
- **Officer's Commission on Forthcoming Bond.** Under § 17.1-274, the commission on a forthcoming bond in cities of a population of 100,000 and more is "ten percent on the first **\$100** of the money for which the distress or levy is and two percent on the residue." This is as distinguished from a flat five percent fee in localities of lesser size and in counties of any size. The \$100 figure has been in place since 1918; altering the figure for inflation would bring it to roughly **\$1400**. We feel that determining the proper amount of this figure requires consultation with the Sheriffs in the Commonwealth to determine their actual costs and whether a distinction between the commissions in large cities and other localities remains warranted. Thus, the Steering Committee should appoint separate committee to study whether § 17.1-274 should be amended to increase the dollar amount contained therein and whether to abolish the distinction between large cities and other localities.
- **Juror Pay.** Currently there is a disparity in pay for jurors in eminent domain cases, who are entitled to **\$60** if they serve, and **\$30** if they are summoned and appear but are not empanelled, and pay for jurors in all other cases, which is **\$30**. Whether the pay should be consistent among these categories, whether the amounts should be the lower or higher figures, and whether there should be any increase based on inflation (figures set in 1993) or policy reasons are all issues that require further consideration. Thus, the Steering Committee should appoint separate committee to study whether § 17.1-618 and § 25.1-235 should be amended so that the compensation provided for therein is uniform and to determine what the appropriate compensation should be if any revisions are deemed necessary.
- **Local Law Libraries.** Under § 42.1-65, donated law libraries of at least \$500 in value are under the charge of circuit court clerks and must be kept and maintained by them. Section 42.1-70 provides for a four dollar assessment for law library acquisition and maintenance expenses as part of costs in civil actions. The \$500 figure was set in 1919 (current amount adjusted for inflation would be over \$6,100) and the four dollar figure was set in 1988 (current amount adjusted for inflation would be over \$7.21). To determine whether the \$500

threshold needs to be adjusted, one would need to know whether the current \$500 amount is burdensome to clerks and what the fate of lesser-valued law libraries might be if the amount were raised. To determine whether the four dollar assessment should be raised, one would need to know the law library costs incurred by localities and other sources of funding support. It would also be helpful to take into account the other costs litigants bear in civil actions to know total burden being imposed. We recommend that the Steering Committee appoint a separate committee to study whether § 42.1-65 and 42.1-70 should be amended to increase the dollar amounts contained therein.

- **Insurance Coverage Amounts.** The amounts listed in 46.2-419, -465, -472 provide for minimum amounts of insurance for motor vehicle accidents. The amounts are \$25,000 for death or bodily injury to one person, \$50,000 for death or bodily injury to two or more persons, and \$20,000 for property damage. The first two figures are from 1975 while the latter is from 1989; they would be \$100,000, \$200,000, and \$35,000, respectively, if adjusted for inflation. Optional insurance amounts for assigned risk policies are \$2,000 per person for medical/chiropractic expenses and \$100 per week for lost pay compensation. These are 1972 figures that would be \$10,000 and \$500, respectively, if adjusted for inflation. Because any increase in these amounts would result in an increase in insurance costs for some motorists, the Steering Committee should assign this topic to a separate study committee composed of Conference members representing plaintiffs, defendants, and insurance companies.
- **Circuit Court/Jury Thresholds.** The following recommendations pertaining to this issue did not have consensus support on the committee because of access to justice concerns:
 - **§ 16.1-103. Proceedings by interrogatories.** . . . From any order of the judge of the general district court which involves the disposition of any money or property exceeding the sum of ~~fifty dollars~~**\$250** in value, exclusive of interest, there shall be an appeal in the same manner and upon the same conditions as in appeals from judgments rendered in civil matters in general district courts. [adjusted for inflation (1956), amount would be \$400; reduced to proposed amount based on access-to-justice concerns]
 - **§ 16.1-106. Appeals from courts not of record in civil cases.** From any order entered or judgment rendered in a court not of record in a civil case in which the matter in controversy is of greater value than ~~fifty dollars~~**\$250**, exclusive of interest, any attorney's fees contracted for in the instrument, and costs, or when the case involves the constitutionality or validity of a statute of the Commonwealth, or of an ordinance or bylaw of a municipal corporation, or of the enforcement of rights and privileges conferred by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), or of a protective order pursuant to § 19.2-152.10, there shall be an appeal of right, if taken within ten days after such order or judgment, to a court of record. . . [adjusted for inflation (1956), amount would be \$400; reduced to proposed amount based on access-to-justice concerns].
 - **§ 16.1-113. How appeals tried.** Every such appeal shall be tried by the court in a summary way, or, if the amount in controversy exceeds ~~fifty dollars~~**\$250**, by a jury if either party requires it. [adjusted for inflation (1956), amount would be \$400; reduced to proposed amount to conform with proposed amount in § 16.1-103 & § 16.1-106].
 - **§ 16.1-122. Appeal.** If the property or money claimed in any such proceeding² is more than ~~\$50~~**\$250** in value, an appeal of right may be had to the judgment or order of the court

² "Such proceeding" refers to a proceeding to try title to property levied on under distress or execution under § 16.1-119.

as provided in § 16.1-106. [adjusted for inflation (1956), amount would be \$400; reduced to proposed amount based on access-to-justice concerns].

- **§ 17.1-513. Jurisdiction of circuit courts.** [The circuit courts] shall have jurisdiction original and general jurisdiction of all civil cases, except cases upon claims to recover personal property or money not of greater value than ~~\$100~~250, exclusive of interest, and except such cases as are assigned to some other tribunal; also in all cases for the recovery of fees in excess of ~~\$100~~250 . . . They shall also have jurisdiction of all other matters, civil and criminal, made cognizable therein by law and when a motion to recover money is allowed in such tribunals, they may hear and determine the same, although it is to recover less than ~~\$100~~250.
- **§ 17.1-514. When plaintiff entitled to less than \$100; judgment for defendant.** In any personal action in a circuit court, wherein it is ascertained that less than ~~\$100~~250, exclusive of interest, is due to the plaintiff, judgment shall be for the defendant, unless the court enter of record that the matter in controversy was of greater value than ~~\$100~~250, exclusive of interest, in which case it may render judgment for the plaintiff for what is ascertained to be due him, with or without costs, in the court's discretion.

Thus, we recommend that the Steering Committee refer the issue of whether to increase the amounts in these provisions to a new study committee.