

# COMMONWEALTH OF VIRGINIA

SENATOR FRANK W. WAGNER, CHAIR  
DELEGATE H. MORGAN GRIFFITH, VICE CHAIR  
ELIZABETH PALEN, COMMISSION COORDINATOR



GENERAL ASSEMBLY BUILDING  
910 CAPITOL STREET, SECOND FLOOR  
RICHMOND, VIRGINIA 23219  
(PHONE) 804-786-3591  
(FAX) 804-692-0625  
epalen@leg.state.va.us  
<http://dls.state.va.us/jcars.htm>

## JOINT COMMISSION ON ADMINISTRATIVE RULES

**JANUARY 8, 2008**

**10:00 AM**

**SENATE ROOM A, GENERAL ASSEMBLY BUILDING**

**RICHMOND, VIRGINIA**

**Meeting Summary**

**Members Present:** Senator Wagner, Senator Marsh, Senator Martin, Senator Whipple, Delegate Gear, Delegate Griffith, Delegate Howell, Delegate Hull, Delegate Ware.

**Staff Present:** Elizabeth Palen and Patrick Regan-Division of Legislative Services, Carol Lynne Shotton-Senate Committee Clerk

### **I. Call to Order, Senator Frank Wagner**

### **II. Language Choices for Administering Virginia Driver's License Examinations (Va. Code. § 46.2-203)**

#### **A. Eddie Jenkins**

- Retired police officer with 30 years of service.
- Contacted the Governor's office asking why people can get Virginia Driver's Licenses when they can't speak or read English.
- The Governor's office responded with a letter from Pierce Homer.
- The letter stated that driver's license examinations are offered in Spanish in order to promote highway safety. The Virginia Department of Motor Vehicles (DMV) administers the written driving test in English, Spanish, and oral examinations.
- How does that promote highway safety?
- In VA all licensed drivers must take the same test and are subject to the same traffic offenses regardless of what language they speak.
- When a driver is pulled over for suspicion of Driving Under the Influence a preliminary statement must be offered before a sobriety test is administered. It is in English.

#### **B. D.B. Smit, Commissioner, Virginia Department of Motor Vehicles**

- Please see the power point handout.
- The DMV administers 66,000 tests per year.

---

SENATOR HENRY L. MARSH  
SENATOR STEPHEN H. MARTIN  
SENATOR FRANK W. WAGNER  
SENATOR MARY MARGARET WHIPPLE  
SENATOR MARTIN E. WILLIAMS

DELEGATE THOMAS D. GEAR  
DELEGATE H. MORGAN GRIFFITH  
DELEGATE ALGIE T. HOWELL, JR.  
DELEGATE FLOYD H. MILES, SR.  
DELEGATE MICHELE B. McQUIGG  
DELEGATE CHRISTOPHER B. SAXMAN  
DELEGATE TERRIE L. SUIT

- 864,000 licensed drivers in Virginia have English as a second language.
- **Delegate Hull**-*how many folks speak another language and have an out of country license?*
- Those numbers are not known at this time, but they can be found.
- The DMV has limited resources which prevent offering tests in other languages.
- Interpreters are permitted for the test, but they are not an optimal solution.
- Test takers that bring their own interpreter have a 56% success rate, while all other tests have a 46% pass rate.
- **Delegate Hull**-*Can the test be read to English speakers who are illiterate?*
- Yes, and we don't offer interpreters, but there tend to be staff members that speak other languages who offer to translate for test takers.
- **Delegate Hull**-*So, where there is a high population of immigrants, the staff members tend to be from those populations also, and can provide a translator service.*
- **Delegate Gear**-*So, if people are bringing their own interpreter, we really don't know if they have legitimately passed the test or not.*
- The DMV has considered other options. One is a telephone company that will translate word for word over the phone, but it would cost 2 million dollars in the first three years. It is being used in other districts, such as the District of Columbia.
- There are also road testing concerns. It is possible to pass a written test, but we inform our instructors to not get in a vehicle with someone if they can't communicate with the driver. Interpreters are not permitted in the vehicles.
- **Delegate Ware**-*If you are concerned with the instructors that can't understand the test takers, aren't there broader implications of other people on the road not being able to communicate with the foreign language speaking driver?*
- Yes, those are our concerns.
- **Senator Whipple**-*But if your examiners won't get in the car if they can't communicate with test taker then they don't get in the car.*
- **Delegate Howell**-*Why can't we have them learn the road signs?*
- Road signs are international symbols based on shape and color. Understanding the language is not necessary to read most street signs.
- **Delegate Howell**-*Maybe we need people to learn the language if they are going to drive on our highways?*
- **Delegate Gear**-*Why do tax payers have to pay for an outside service to test these individuals? Why don't the non-English speakers taking the test pay for it at the time they take the test?*
- **Senator Wagner**-Under Va. Code. § 46.2-203 the Commissioner has broad latitude to set up driver's license tests. Do you check if people are here legally before they get their license?
- Yes we do.

### III. Regulation for Scrapie Eradication, 2 VAC 5-206

A. Wayne Bolton, Vice-President, Virginia Independent Consumers and Farmers Association, Inc (VICFA)

- VICFA is asking that JCAR file an objection to these regulations because they are unduly burdensome.
- Proposed regulation 2 VAC 5-206 will require farmers to register all of their sheep and goats with the state and keep records for 5 years. Failure to do so is punishable by a year in jail or \$2500 fine.
- Scrapies does not exist in VA. There were only 3 incidents in sheep in VA.
- Farmers should be allowed to raise and sell to the consumer what the farmer wants.
- Unless you want all goods to come from other countries, the inspection should be between the farmer and the consumer.
- **Delegate Hull**-*Is your particular problem with these regulations that they are unnecessary?*
- No, I am against all regulations, but particularly the ones proposed.
- **Delegate Hull**-*The goal of agricultural regulations is to ensure food is safe, but I would be sympathetic if these were unnecessary regulations. Do these proposed regulations go further than is required under federal law?*

#### B. Christine Solem

- The proposed regulations go above and beyond what the federal regulations require. 9 CFR § 79.6 (Standards for States to Qualify as Consistent States).
- VA can be consistent, but they need to be rewritten to only meet the minimum federal regulations.
- **Delegate Griffith**-*Does the term sell also include “give”? Would someone that gives a goat or sheep as a gift for a pet be required to comply with this regulation?*
- Not sure, but these regulations need to be rewritten to only apply to the animals addressed by the federal regulation.
- **Senator Wagner**-*JCAR is intended to act as a check on over burdensome regulations and to address citizen concerns such as these.*

#### C. Dr. Richard Wilkes, State Veterinarian, Division of Animal and Food Industry Services

- Scrapie was first diagnosed in 1947 and probably came from Europe through Canada.
- It is a complicated disease with many different ramifications.
- If it gets into a flock, it can reduce the productivity of the protected flock, and makes it difficult for people to dispose of diseased animals.
- It hinders attempts to trade internationally.
- Two countries in the world are scrapie free, New Zealand and Australia.
- The US made a commitment to sheep farmers to be scrapie free, which resulted in the federal regulations.
- The issue is complicated because there is a long time between exposure and recognition of the disease, hence the identification requirement.
- An infected individual could not show signs for 5 years.

- The intention is to comply with the minimum requirements outlined by the United States Department of Agriculture (USDA).
- Improvements need to be made to some of the definitions.
- However, Virginia will comply either through the Virginia Department of Agriculture handling it, or the USDA will step in and do it themselves with oversight over Virginia farms.
- **Delegate Hull**-*Is there another animal disease which has a long incubation period, but there are not the same requirements?*
- There are and as we evaluate them we are realizing the deficiencies in our regulations. Tuberculosis is a similar disease.
- **Delegate Hull**-*The suggestion these folks are making is that the intensive identification should not be done until there is a problem.*
- If we wait to make an identification we could be 5 years behind, and the herd could have changed and there is no way to know how far it has spread.
- However, no one is required to have identification until the sheep enter commerce.
- The ramifications of Inconsistent State status are much greater on the sheep industry than they are on the goat industry.
- If we were an Inconsistent State there would be a sheep identification program which they would have to undergo. Livestock markets would have to set up restrictions to keep certain sheep apart.
- **Senator Wagner**-*The punishment is not part of the regulation though. The Code of Virginia says violation of the regulations of the State Veterinarian is a class 1 misdemeanor.*
- **Delegate Ware**-*How many prosecutions have you had in the past several years similar to this?*
- Since 2005, there have been 2 convictions; those are the only two prosecutions that can be recalled at this time.
- **Senator Wagner**-*There is a degree of flexibility as far as the APA is concerned in this regulation.*
- The Board of Agriculture and Consumer Services can still incorporate suggestions and changes.
- **Senator Wagner**-*If the Commonwealth does not adopt these regulations the federal government will step in and become the enforcer if the federal requirements.*
- That is correct, and the sheep producers will still have to be certified regardless of the state taking action, but it will be by the federal government.
- **Senator Wagner**-*It is a lot easier dealing with the Commonwealth and not the federal government. The concern is with the small farmer that is not aware of these regulations.*
- Debbie Stockton-The USDA made an agreement with a few individuals of the sheep industry, not the entire population that own sheep.
- People in other states have not been complying with these regulations. We will not comply with these regulations.

- Sid Stovozum-There were misstatements by Dr. Wilkes. All animals are purchased at some point and they all will be part of commerce. Scrapie is not connected to mad cow and it is not a problem in this state.
- Barbara Halligan-Goats do not suffer from this disease. The USDA is tying mad cow to this and it is frustrating that the government can take away sheep over international trade issues. Farmers are being coerced into compliance.
- Dr. Wilkes-The Virginia State Board of Agriculture and Consumer Services held a public hearing in August.

**D. Terry Taylor, USDA Veterinarian in Virginia.**

- The proposed Virginia regulations just meet the minimum requirements for compliance with the USDA Scrapie eradication program.
- The federal government can only regulate interstate commerce. Virginia is in charge of intrastate commerce.
- The USDA will not come in and regulate intrastate trade if Virginia does not meet the requirements, but they will regulate interstate requirements. These requirements will be a lot more stringent. They would include health certificates and identification.
- The greatest negative impact is going to come from other states that will limit Virginia sheep from entering their state because they have not met the standards.
- The National Animal Identification System (NAIS) is separate from the goat and sheep identification program.
- If NAIS ever does become a universal program, then sheep and goats will be incorporated, but there are no plans now.
- **Delegate Griffith**-*How many cases of Scrapie have there been nationally in the last 4 or 5 years?*
- It is not a prevalent disease, but there have probably been a couple dozen in the past couple decades.
- **Senator Martin**-If for the last 60 years there have been approximately 1000 cases. On average there is one case every three and a half years per state. It seems almost negligible. What is really the problem?
- It is an infectious disease that still exists and must be controlled.
- **Senator Wagner**-*Currently there is not a final regulation and if we did act it would only be in effect until session started. Opponents of this regulation should look to a legislative remedy during the session.*

**IV. Access Management Regulations, 24 VAC 30-72**

**A. Mike O'Connor, President, Virginia Petroleum, Convenience and Grocery Association**

- There are concerns with a narrow aspect of the regulation.
- Although we have been told that this is prospective only.
- Public Comment and Hearing was held.
- The conditions for when Commercial Entrances may be closed violate property rights. Specifically on p. 19, section C, subpart 3.
- **Delegate Hull**-Who determines when there has been a change to the property?

**B. Pierce Homer, Secretary of Transportation**

- An entrance is a property right.
- The department can not extinguish a property right and this is stated in the regulation.
- The section objected to by Mr. O'Connor has been in effect for over a decade.
- These regulations are also not retroactive. There are rare instances when the community zoning is inadequate and may prevent the change in business.
- **Delegate Hull**-If you have a highway that is not designated as limited access, could the Commission change it to limited access?
- The department would be required to take the entire parcel if this is done. VDOT is required under federal statute to take the parcel if you are going to take the property right and the owner must be compensated for it.
- **Delegate Hull**-*So, the Commonwealth Transportation Board could not just designate a road as limited access without taking the property and paying for it.*
- This was originally a mandate in the 2006 budget bill and there is a waiver of the Administrative Process Act. We are going to seek additional public comment.
- The Virginia Department of Transportation (VDOT) wants to preserve existing capacity. This can improve safety and economic development. None of this has been written down previously. This is the first time there is a written standard which can be looked to.
- Implementation of this would be a phase in process. First phase would be the major arteries that move a lot of traffic over long distances.
- **Delegate Hull**-*This does not apply to service roads?*
- No, it does not. Sometimes service roads are a positive option.
- The regulation is not retroactive. It will not close existing entrances and the parcels of land are guaranteed at least one access point.
- There is also an appeals process in place. For the first time there is a specified timeline and process.
- **Senator Wagner**-*Could you address the issue of changing gas stations with service bays to gas station with a convenience store. Are those sufficient changes to let VDOT change the access?*
- The locality may negotiate with the owner if a gas station with several entrances converts to a convenience store, but what we provide are written standards. But if it were just a service station that wanted to expand its operation, that wouldn't even come under VDOT.
- **Delegate Hull**-*Regulations would only come into play if governing body came into some change?*
- A sight plan review at the local level may change the reconfiguration of the entranceways.
- Any time there is a ministerial change of the use will require VDOT review. Typically negotiated between the property owner and the locality. VDOT is asked to comment on those plans.
- This regulation is already done in a dozen states around the country, and in cities and counties within VA.

C. Mike Toalson

- A number of property owners have anticipated having access to the current roads, but have been surprised by this.
- If this regulation is going to have a grandfather effect, it should expand to all under Va. Code § 15.2-2307.
- **Delegate Hull**-*Some property owners may have bought land and waited to build and now the sight plan has been approved, but this regulation is affecting them.*
- **Senator Wagner**-*Currently, there is no final regulation for us to act on, but this provides a forum to address the issue.*

V. **Other Business and Public Comment**

- There is none. Meeting adjourned at 11:40 am.