

“All laws enacted at a regular session, . . . excluding a general appropriation law, shall take effect on the first day of July following the adjournment of the session of the General Assembly at which it has been enacted.”
(Constitution of Virginia, Article IV, Section 13)

In Due Course:

2004 Changes to Virginia’s Laws



This publication provides a brief summary of legislation passed by the 2004 General Assembly that is of interest to the citizens of Virginia and is likely to have an impact on their daily lives. The legislation has been signed by the Governor, and most is due to go into effect on July 1, 2004. The summaries were prepared by the staff of the Division of Legislative Services.

Taxes

Because the General Assembly approved the following taxation measures during its 2004 Special Session, “in due course” for this legislation will be September 1, 2004.

Sales and use tax. The tax rate will **increase** from 4.5 percent to 5.0 percent on September 1, 2004.

Cigarette tax. The state tax on a pack of cigarettes will **increase** from 2.5 cents to 20 cents on September 1, 2004, and to 30 cents on July 1, 2005.

Recordation tax. The tax rate for recording real estate transactions will **increase** from 15 cents to 25 cents per \$100 of value on September 1, 2004.

DUI

Increased penalties. Mandatory penalties increase as follows: for a second conviction within 10 years: 10 days in jail; for a second conviction within 5 years: 20 days; for a third conviction within 10 years: 90 days; and for a third conviction within 5 years: 180 days.

Central Criminal Records Exchange (CCRE). DUI convictions, not previously reported, will be reported to the CCRE.

Bail. Bail for repeat DUI offenders will be more difficult to obtain.

License suspension for refusal. Refusal to take a blood or breath test will be a criminal offense. For refusal within 10 years of a prior offense: 3-year license suspension and a Class 2 misdemeanor; for refusal for a third offense within

10 years: 3-year license suspension and a Class 1 misdemeanor.

Elevated BAC. Additional penalties, including mandatory jail time, for driving with elevated blood alcohol content (BAC) levels will apply for BAC levels of .20 (rather than .25) and .15 (rather than .20).

Zero tolerance. Driving on a DUI-restricted license with a BAC of .02 or above will be a Class 1 misdemeanor.

Vehicle forfeiture. A vehicle solely owned and operated by an individual convicted of a third or subsequent DUI offense (felony DUI) may be seized and ordered forfeited to the Commonwealth.

Mandatory minimum fine. A mandatory minimum fine of \$250 will apply for **all** first offense DUIs, not just for those offenders with an elevated blood alcohol content.

Criminal Justice

“21-day rule.” Establishes a procedure for a convicted felon to petition the Court of Appeals for a writ of actual innocence based on previously unknown or unavailable nonbiological evidence, a process similar to the one that already exists in the Code for previously unknown or untested biological evidence. The procedure is not available to felons who pleaded guilty and may be used only once.

Racketeer Influenced and Corrupt Organization (RICO) Act. Under Virginia’s RICO act, various violations of alcoholic beverage, banking, and criminal law may be prosecuted as racketeering, with fines of up to \$2 million and prison terms of 5 to 40 years. The Attorney General is authorized to prosecute violations of the Act.

Killing a fetus. Any person who maliciously, willfully, deliberately, and unlawfully kills the fetus of another is guilty of a Class 2 felony (20 years to life).

Wrongful incarceration. Provides guidelines for the compensation of persons wrongfully incarcerated. A wrongfully incarcerated person may receive an amount equal to 90 percent of the Virginia per capita personal income for each year of incarceration up to 20 years.

Recording of motion pictures. Recording a motion picture while it is being shown at a movie theater will be punished as a Class 1 misdemeanor.

Domestic Violence Fund. The Virginia Domestic Violence Victim Fund, to be administered by the Department of Criminal Justice Services, will support domestic violence, sexual abuse, stalking and family abuse services. An increase in court fees, with a dedicated portion (\$2) of court fees deposited into the fund, will generate approximately \$2.5 to \$3 million per year, which will be available to

- prosecutors to support the prosecution of felonies and misdemeanors involving domestic violence, sexual abuse, stalking and family abuse, and
- law-enforcement authorities or appropriate programs, including civil legal assistance, to assist in protecting and providing necessary services to victims of and children affected by domestic violence, sexual abuse, stalking and family abuse.

Arrest and detention of illegal aliens. All law-enforcement officers will have the authority to enforce immigration laws. A law-enforcement officer may, in the course of acting upon reasonable suspicion that an individual has committed or is committing a crime, arrest the individual without a warrant upon receiving confirmation from the Bureau of Immigration and Customs Enforcement that the individual is an illegal alien, has previously been convicted of a felony in the United States, and has been deported or left the United States after such conviction. A magistrate may issue a warrant and the person may be detained for not more than 72 hours or until taken into federal custody, whichever occurs first. The bill creates a presumption that an individual shall not be admitted to bail if he is detained pursuant to this provision.

Education

Brown v. Board of Education Scholarship Program and Fund. The Brown v. Board of Education Scholarship Program and Fund will assist students who were enrolled in the pub-

“Isabel Bills”

Several measures before the 2004 General Assembly were occasioned, at least in part, by the depredations of Hurricane Isabel in September 2003.

Price gouging. Prohibits suppliers from selling, leasing, or licensing necessary goods and services during times of disaster at an unconscionable price. A violation constitutes a prohibited practice under the Virginia Consumer Protection Act, though victims will not be able to bring a private cause of action.

Flood insurance. Insurers issuing a new or renewal contract or policy of homeowners insurance on or after October 1, 2004, that excludes flood coverage must provide written notice to the policyholder that contents coverage may be available with the flood policy for an additional premium. An insurer is required to notify a policyholder when flood coverage is excluded from a policy or contract and that flood insurance is available from the insurer, insurance agent, or the National Flood Insurance Program.

Homeowners insurance deductibles. An insurer who unilaterally changes the deduct-

ible on a policy insuring an owner-occupied dwelling must provide written notice to the insured stating that the deductible has been changed and explaining how the new deductible will be applied. This section will apply to policies renewed in Virginia on or after October 1, 2004.

Unemployment compensation. An employer will not be responsible for benefit charges due to unemployment resulting from a temporary work closure forced by a disaster for which the Governor has declared a state of emergency. The benefit charges, not to exceed four weeks, will be assigned to the pool tax.

Emergency power. Assisted living facilities with six or more residents will be able to connect by July 1, 2007, to a temporary emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply.

lic schools of Virginia between 1954 and 1964, in jurisdictions in which public schools were closed to avoid desegregation, in obtaining a high school diploma, the General Education Development certificate, career or technical education or training, or an undergraduate degree from a public institution of higher education in Virginia.

Family life education. Adds to the family life curriculum steps to take to avoid sexual assault and the availability of counseling and legal resources, and, in the event of such sexual assault, the importance of immediate medical attention and advice. The goals of the revised curriculum are “reducing the incidence of pregnancy and sexually-transmitted diseases and substance abuse among teenagers.”

Alternatives to student dissection of animals. School divisions will be required to provide students with alternatives to animal dis-

section in public school courses, including the use of detailed models of animal anatomy and computer simulations as alternatives to dissection.

Duty to report child abuse or neglect. Each public school board and each administrator of every private or parochial school must post in each of their schools a notice that (i) any teacher or other person employed in the school who has reason to suspect that a child is abused, neglected, or abandoned is required to report such suspected cases of child abuse or neglect to local or state social services agencies or the person in charge of the school, and (ii) all persons required to report cases of such suspected child abuse or neglect are immune from civil or criminal liability or administrative penalty or sanction on account of such reports unless the person acted in bad faith or with malicious purpose.

Localities

Golf carts and utility vehicles. Authorizes limited over-the-road operation of golf carts and utility vehicles under conditions set, for the most part, by local governing bodies.

Sunday ABC sales. ABC stores in Northern Virginia and Tidewater will be open on Sundays after 1:00 p.m.

Paintball guns. Localities will be authorized to regulate or restrict the use of paintball guns by ordinance, including requiring that minors under the age of 16 have adult supervision when using them.

Richmond mayor. Provides for the direct election of the mayor, for a term of four years, beginning in November 2004. The person receiving the most votes in each of at least five of the nine city council districts shall be elected. Should no one be elected, a runoff election will be held between the two persons receiving the highest total of votes citywide.

Missing children. Requires that local law-enforcement agencies enter descriptive information about a missing child into the Virginia Criminal Information Network and National Crime Information Center systems, forward the report to the Missing Children Information Clearinghouse maintained by the State Police, notify other local law-enforcement agencies, and initiate an investigation **within two hours** of receiving a report of a missing child. Currently, the law requires that this be done "immediately," but does not define what this means.

Placement of committed persons and notice to community. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services, prior to placing a new facility or designating an existing facility to be operated for the control, care, and treatment of persons convicted of a sexually violent offense who have been referred for civil commitment, must notify the state elected officials and the local governing body of the jurisdiction where the facility will be placed. Upon receiving the notice, the local governing body may publish a descriptive notice concerning the proposed site in a newspaper of general circulation. The Commis-

sioner must also establish an advisory committee relating to any such facility that must consist of state and local elected officials and community organizations. Upon request, the members of the advisory committee will be notified whenever the department increases the number of beds in the relevant facility.

Health

Illegal prescription drugs. Any person who, for compensation, knowingly assists another in unlawfully procuring prescription drugs from a pharmacy or other source he knows is not licensed, registered, or permitted by the licensing authority of the Commonwealth, any other state or territory of the United States, or the United States, will be guilty of a Class 1 misdemeanor and, upon a second or subsequent conviction, a Class 6 felony.

Licensure conditions for certain methadone clinics. Prohibits the location of methadone clinics within a one-half mile of a public or private day care center or public or private K-12 school, except when the clinic's services are provided by a licensed hospital. The Commissioner must, within 15 days of receiving an application for licensure from a provider of treatment of persons with opiate addiction, notify the local governing body and the community services board serving the jurisdiction in which the facility is to be located of the application and its proposed location. The local governing body and the community services board must submit comments to the Commissioner on the proposal or application within 30 days of the date of the notice. The local governing body must notify the Commissioner of compliance with the location restrictions and any relevant local ordinances. No applicant for a license to provide treatment for persons with opiate addiction through the use of methadone or other opioid replacements that has obtained a certificate of occupancy in accordance with the law and regulations in effect on January 1, 2004, will be required to comply with this law, and no existing licensed provider will be required to comply with these provisions. Further, the location restriction will not apply to jurisdictions located in Northern Virginia.

Electricity

Electric utility restructuring. The General Assembly reaffirmed its commitment to replace the traditional cost-of-service system of regulating the costs of electricity generation with a new system where such costs will be established by competitors in the market. The 2004 amendments to 1999's Electric Utility Restructuring Act:

- ❑ Extend the expiration date of the capped rates for incumbent electric utilities from July 1, 2007, to December 31, 2010.
- ❑ Authorize local governments to implement profit-making programs to aggregate the electric energy load of residential and other retail customers within its boundaries on an opt-out basis, and eliminate the requirement that aggregated customers must affirmatively elect to participate in such aggregation programs.
- ❑ Authorize incumbent electric utilities, other than Dominion Virginia Power, to petition the SCC for a one-time change in the capped rates after January 1, 2004, and for another change in the capped rates after July 1, 2007.
- ❑ Authorize incumbent electric utilities, other than Dominion Virginia Power, to petition the SCC annually for adjustment in its capped rates to recover its incremental costs for transmission or distribution system reliability and compliance with environmental laws.
- ❑ Extend Dominion Virginia Power's fuel factor that was in effect on January 1, 2004, until July 1, 2007, after which it may be adjusted to a new level that will remain in effect through 2010.
- ❑ Extend by two years the expiration date of certificates previously issued by the SCC authorizing the construction and operation of several electrical generating facilities.
- ❑ Authorize large industrial and commercial customers that return to their incumbent electric utility or default provider after purchasing power from a competitive supplier to avoid the existing minimum stay requirements by agreeing to accept market-based pricing.
- ❑ Authorize industrial and commercial customers, as well as aggregated customers in all rate classes, to switch to a competitive service provider without paying a wires charge if they agree to pay market-based prices if they ever return to the incumbent electric utility, subject to certain size limits.
- ❑ Authorize an investor-owned distributor that has been designated a default service provider to petition the SCC for approval to construct a coal-fired generation facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth, and authorize the developer of the facility to recover the costs of the facility, plus a fair rate of return, through its default service rates.

vision examination by an ophthalmologist or optometrist indicating that the applicant's vision meets or exceeds standards.

HOT lanes. Provides for the designation, by the Commonwealth Transportation Board, of high-occupancy toll (HOT) lanes with electronically collected and photo-enforced tolls.

Other Measures

Theft of oysters and clams. Provides that any person who takes naturally occurring oysters or clams from leased planting grounds without the permission of the owner is guilty of larceny.

Beekeeper assistance. The Commissioner of Agriculture and Consumer Services will establish a beekeeper assistance program to assist Virginia beekeepers in maintaining healthy, productive bee colonies.

Animals attacking animals. An owner of a dog or cat who uses reasonable and necessary force, on his own property, against a dog that is attacking the owner's dog or cat will be exempt from a charge of intentional animal cruelty.

Nudist camps for juveniles. Provides that the Board of Health shall not issue a license to the owner or lessee of any hotel, summer camp,

or campground in the Commonwealth that maintains or conducts as any part of its activities a nudist camp for juveniles. A "nudist camp for juveniles" is defined to be a hotel, summer camp or campground that is attended by nude juveniles whose parent, grandparent or legal guardian is not also registered and present with the juvenile in the same camp.

Transportation

Vision examinations for driver's licenses.

No driver's license or learner's permit issued to any person who is 80 years old or older will be renewed unless the applicant appears in person and either (i) passes a vision examination or (ii) presents a report of a recent

Affirmation of Marriage Act for the Commonwealth of Virginia. States that a civil union, partnership contract, or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage is prohibited and that such an arrangement entered into in another state or jurisdiction is void in Virginia and any contractual rights created thereby are void and unenforceable.

Off-track betting. The number of satellite facilities (off-track betting) that the Virginia Racing Commission may authorize will increase from six to 10.

Virginia Wine Board. The Virginia Wine Board and the Virginia Wine Promotion Fund will be established to replace the Virginia Winegrowers Advisory Board and the Winegrowers Productivity Fund. The new board will include citizens who represent grape growers and owners or operators of wineries or farm wineries. The board can contract for research services to improve viticultural and enological practices in Virginia, enter into contracts with private and public entities to market, advertise and promote the industry, and engage in revenue-producing activities. The fund consists of general fund appropriations, fees from services rendered, and payments received for products, equipment or goods supplied.

Hunting and Fishing

Saltwater licenses. The Virginia Marine Resources Commission will be authorized to adjust fees for saltwater fishing licenses and permits. The fee increases are capped at \$5 or an inflation factor, whichever is greater, and the fee cannot be increased more often than once every three years. The amounts generated from increases will be paid into the Marine Fishing Improvement Fund and the Virginia Saltwater Recreational Fishing Development Fund.

License fees. The Board of Game and Inland Fisheries, through the adoption of regulations, may revise the fees for hunting, trapping, fishing, and motorboat registration. The fees cannot be changed more than once every three

years, and any increase or decrease in the fee cannot be for more than \$5.

Combined fresh water and saltwater fishing licenses. A special combined fishing license will be available for persons who want to fish in freshwater and saltwater. If a person purchases this license, he will **not** have to buy a basic state fishing license or the saltwater recreational fishing license. The cost of this combined license is \$19.50 for residents and \$37.50 for nonresidents. A trip license that allows persons to fish in all inland and tidal waters for five successive days will also be available at a cost of \$10.50 for residents and \$15.50 for nonresidents. Proceeds from the new combined licenses will go to the Virginia Saltwater Recreational Fishing Development Fund and the Game Protection Fund.

Nonresident youth hunting licenses. New license fees for nonresident youth who wish to hunt in Virginia will be in effect (currently, there is no distinction by age for the various nonresident hunting licenses):

Basic nonresident hunting license:

Under 12	\$12.00
12 to 15	\$15.00
16 and older	\$80.00

Nonresident combination license (including bear, deer, turkey; special archery season; muzzleloading season):

Under 16	\$30.00
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Big game license:

Under 12	\$12.00
12 to 15	\$15.00
16 and older	\$60.00

Stationary duck blinds. A stationary duck blind must be erected at a fixed location for the purpose of hunting or shooting waterfowl. This new definition will eliminate the practice of erecting what are known as “dummy blinds,” which are placed on the shore or in the water in order to prevent the construction of an actual blind in the immediate vicinity.

Killing of beaver. A landowner whose crops or property has been damaged by beavers may kill, or employ someone to kill, beavers out of season without having to obtain a permit from the Department of Game and Inland Fisheries.

Special License Plates

Revenue-Sharing Special License Plates

Revenue-sharing special license plates are subject to a \$25 annual surcharge. When at least 1,000 sets of these plates are sold, \$15 of each \$25 annual surcharge goes to support some specified entity (shown here in parentheses):

- Virginia agriculture.** *(The Office of Farm Land Preservation to support the Virginia Agricultural Vitality Program.)*
- Blue Ridge Parkway Foundation.** *(The Blue Ridge Parkway Foundation to support its programs and activities in Virginia.)*
- Canine Health Foundation.** *(The Canine Health Foundation to support its programs and activities in Virginia.)*
- Children with special needs.** *(Snap4kids to support its programs and activities in Virginia.)*
- Virginia Sheriffs' Institute.** *(The Virginia Sheriffs' Institute to memorialize and honor Virginia law-enforcement officers killed in the line of duty.)*
- Adoption programs.** *(The Virginia Department of Social Services (i) to support its adoption programs and (ii) to develop a grants program that shall provide all licensed Virginia nonprofit child-placing services a means to apply for portions of such funds to support their child placement programs and activities in Virginia.)*
- Mothers Against Drunk Driving.** *(Mothers Against Drunk Driving to support its programs and activities in Virginia.)*
- Interdenominational Children's Foundation of Virginia.** *(The Interdenominational Children's Foundation of Virginia to support the foundation's activities and programs.)*
- Juvenile Diabetes Research Foundation.** *(The Juvenile Diabetes Research Foundation to support its programs and activities in Virginia.)*

- Virginia Motor Sports Initiative.** *(Equal amounts to the Virginia Economic Development Partnership Authority and the Virginia Department of Business Assistance to support their programs related to the Virginia Motor Sports Initiative.)*

Standard Special License Plates

Special license plates will be available
For supporters of:

- Organ donor programs**
- Project Lifesaver**
- Washington, D.C., United** soccer team
- Boy Scouts of America**
- Court-Appointed Special Advocate (CASA)** programs
- American Legion**

For persons who are:

- Paratroopers** or **former paratroopers**
- Retired law-enforcement officers**
- U.S. Navy chief petty officers**
- Recipients of the **Combat Infantryman Badge**
- General registrars**
- Bicycle enthusiasts**
- Barbershop quartet singing enthusiasts**

Displaying:

- the **POW/MIA logo**
- the legend: **Langley Air Force Base**

Commemorating:

- the **150th anniversary of Burke's Station**
- the **200th anniversary of the Town of Occoquan**
- the **275th anniversary of the County of Prince William**
- the **350th anniversary of the County of New Kent**

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Click on *Session Tracking* for a complete array of menu choices for finding bill summaries or complete bill text for all legislation considered by the 2004 General Assembly during its regular and special sessions.



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