



“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: 2009 Changes to Virginia's Laws

This publication provides a brief summary of legislation passed by the 2009 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, 2009. The summaries were prepared by the staff of the Division of Legislative Services.

Alcoholic Beverages Control

ABC pilot project. The law creates a two-year pilot project for participating mixed beverage restaurant licensees to use an alternative calculation for the food-to-beverage ratio based on volume by proof gallon.

Special event license. The law creates a new type of special event license that will allow the State Fair in Caroline County to serve wine, beer, and mixed beverages.

Animals

Dangerous dogs. The law provides that if a court finds a dog to be a dangerous or vicious animal, it may order the owner, custodian, or harbinger of the dog to pay restitution for actual damages to any person injured by the dog or whose companion animal was injured or killed by the dog.

Business & Employment

Automatic dialing-announcing devices. The law prohibits a business from using an automatic dialing-announcing device to make a commercial telephone solicitation unless a subscriber has requested or authorized receipt of the message or unless the message is preceded by a live operator who obtains consent before delivering the message.

Earned income tax credit. The law requires employers to post any notice that may be provided by the Department of Social Services informing employees that they may be eligible for federal and state earned income tax credits.

Payment of wages by prepaid cards. The law authorizes employers to pay wages to an employee hired after January 1, 2010, by credit to a prepaid debit card account if the employee does not designate his own financial institution. The employer is required to arrange for the card and the employee will have the

ability to make at least one free withdrawal per pay period.

Sales of recalled children's products. The law prohibits under the Virginia Consumer Protection Act the sale or manufacture of children's products a supplier believes has been recalled by the United States Consumer Product Safety Commission. The law does not apply to products that are used or "seconds."

Scrap metal processors. The law adds catalytic converters to the list of proprietary articles for which heightened scrutiny is required prior to sale to a scrap metal processor.

Unemployment benefits. The law postpones the scheduled increase, from \$2,700 to \$3,000, in the minimum amount of wages an employee must have earned in the two highest earnings quarters of his base period in order to be eligible for unemployment benefits. The increase had been scheduled to apply to claims filed on or after July 5, 2009, and now will apply to claims filed on or after July 4, 2010.

Civil Law

Garnishment. The law provides that a parent whose household income does not exceed \$1,750 and who supports a dependent child or children residing with him may hold exempt from garnishment an additional amount for the support of the child or children as follows: \$34 per week for one child, \$52 per week for two children, and \$66 per week for three or more children.

Homestead exemption. The laws:

- Increase the homestead exemption from \$5,000 to \$10,000 for householders who are 65 years of age or older.
- Increase the additional homestead exemption for disabled veterans from \$2,000 to \$10,000.

Postadoption contact and communication. The law authorizes and establishes procedures governing postadoption contact and communication agreements between the birth parent or parents of a child and the preadoptive parent or parents.

Petition to remove a public official. The law provides that the court will not dismiss a petition for the removal of a public official solely because of an error or omission in the form of the petition unless the error or omission is material in determining whether statutory requirements have been met. The measure provides further that any person who signs or circulates a petition for the removal of a public official:

- Will not be liable for any costs associated with the proceedings, including attorney fees or court costs.
- Will not have sanctions or fines imposed on him under the statute that provides sanctions in frivolous court proceedings.

Criminal Law

Abduction. The law expands abduction to include abducting a person with the intent to subject the person to forced labor or services. Intimidation is redefined to include withholding a person's passport or like documents. The law also adds four new RICO (Racketeer Influenced and Corrupt Organizations) crimes.

Possession of ammunition by convicted felons. The law prohibits a convicted felon from possessing ammunition for a firearm and adds a definition of ammunition. A violation is a Class 6 felony.

Power of magistrates to issue felony arrest warrants. The law provides that a magistrate may not issue an arrest warrant for a felony offense upon the basis of a complaint by a person other than a law-enforcement officer without prior consultation by the magistrate with the attorney for the

Commonwealth or without prior consultation with a law-enforcement agency, if no attorney for the Commonwealth is available. The law also provides that a written complaint shall be required whenever practicable if the complainant is not a law-enforcement officer.

Reimbursement of expenses in DUI and related incidents. The law specifies that a locality that has passed an enabling ordinance is entitled to restitution from a person convicted of certain DUI offenses, when issuing any arrest warrant or summons, in addition to compensation for an appropriate law-enforcement response.

Sexual battery. The law expands the authority of a magistrate or judge to issue any stalking protective order to include issuance when a warrant is issued for sexual battery or aggravated sexual battery. Currently, issuance of the order is limited to criminal offenses resulting in serious bodily injury or stalking.

Higher Education

Financial aid programs. The law provides that students who have completed a program of home school instruction and certain students who have been excused from school attendance will be deemed to have met any high school graduation requirements for purposes of determining eligibility for any state-supported financial aid or other higher education programs. Also, when a high school grade point average, class rank, or other academic criteria is specified as a condition of participating, the State Council of Higher Education for Virginia will develop an equivalent measure for these students.

National Guard tuition assistance. The law provides, notwithstanding the eligibility requirement that a member of the National Guard have a minimum of two years remaining on his service requirement in order to receive a tuition grant, if a member is

activated or deployed for federal military service, an additional day, up to 365 days, will be added to the member's eligibility for the grant for each day of federal service. Additional credit, or credit for state duty, may be awarded at the discretion of the Adjutant General.

State Council of Higher Education student advisory committee. The law permits the State Council of Higher Education for Virginia to appoint students enrolled in private and accredited institutions of higher education in the Commonwealth to the student advisory committee.

Public Education

Educational Opportunity for Military Children. The law establishes a compact to remove barriers to success imposed on children of military families because of frequent moves and deployment of their parents.

Family life education. The laws:

- Require school divisions to distribute a summary, already required by law, to be made available to parents and guardians to assist them in understanding the public school family life education program and include a statement that they have the right to review all materials used in the program, as well as remove their child from all or part of the family life instruction.
- Add the benefits, challenges, responsibilities, and value of marriage for men, women, children, and communities to the list of topics to be covered in family life education curricula.

Planning time for school teachers. The law requires local school boards to ensure that all elementary school teachers are provided an average of 30 minutes a day of planning time.

Special education due process hearings. The law provides that any party aggrieved by a decision made in a special education due process hearing may

appeal the decision to a circuit court within 180 days.

Textbooks. The law provides that local school boards may assess a reasonable fee or charge for the loss or damage to a textbook, so long as the textbook has been provided to the student free of charge.

Elections

Absentee voters and first responders. The law adds law-enforcement officers, firefighters, and other first responders to the list of persons who are entitled to vote absentee.

Federal write-in absentee ballots. The law provides that a federal write-in absentee ballot will be valid for purposes of satisfying both an absentee ballot application and a completed absentee ballot for federal offices if the envelope contains the signature of a witness and even if the witness' printed name and address is not completed.

Petition to remove a public official. See Civil Law.

Registration and election processes. The law:

- Clarifies the definition of "residence" for voting purposes.
- Allows a person to wear political shirts, hats, stickers, or other apparel at a polling place.
- Increases the criminal penalty for voting by a person who knows he is not qualified to vote or assisting another person to vote who is not qualified.

Energy

Clean energy financing. The law authorizes localities to provide loans for the initial acquisition and installation of clean energy improvements.

Electric energy efficiency programs. The law authorizes investor-owned electric utilities to recover the costs of designing, implementing, and operating energy efficiency programs.

Electrical generation from agricultural waste. The law excludes any farm that owns and operates facilities for the generation of electric energy from waste-to-energy technology, including methane digesters, from regulation as a public utility, public service corporation, or public service company.

Electric rates of distribution cooperatives. The law authorizes any distribution electric cooperative, without State Corporation Commission approval, to adjust its rates in a manner reasonably calculated to collect any or all of the fixed costs of owning and operating its electric distribution system through a new or modified fixed monthly charge.

Environment & Natural Resources

Department of Forestry permit. The law authorizes the State Forester to require a person to obtain a permit to fish, as well as to ride mountain bikes or horses on lands under the control of the Department of Forestry. Currently, a permit to hunt or trap is required.

No discharge zone. The law establishes the tidal creeks of Virginia as "no discharge" zones. Vessels operating in these designated areas are prohibited from discharging treated and untreated waste into the waters. A no discharge zone would only be established on tidal creeks where the U.S. Environmental Protection Agency has determined that sufficient facilities exist for the removal of sewage.

Rechargeable battery recycling. The law authorizes localities to ban the disposal of rechargeable batteries in any waste disposal facility within its jurisdiction, provided the locality has a recycling program that is capable of handling rechargeable batteries.

Refunds for saltwater fishing licenses. The law requires the Marine Resources Commission to refund fees for saltwater fishing licenses on a prorated basis if the Commission stops selling the license due to fishery management purposes.

State parks and access for disabled veterans. The law establishes a Disabled Veteran's Passport program that provides free parking and admission and a 50 percent discount on camping and swimming fees, picnic shelter rentals, and other park equipment rentals for veterans with a service-connected disability rating of 100 percent.

Wearing blaze orange. The law exempts persons from wearing blaze orange clothing when hunting doves.

FOIA

Protection of Social Security Numbers. The law provides that the first five digits of a social security number contained in a public record are confidential and exempt from disclosure under the Freedom of Information Act.

Health

Advance medical directives. The law revises the Health Care Decisions Act to allow a person to make a written advance directive to specify health care the declarant does or does not authorize, appoint an agent to make health care decisions for him, and specify an anatomical gift.

Designation of persons authorized to make funeral and burial decisions. The law allows identification of persons who may make decisions about the funeral of a deceased person, as well as specification of the priority of persons to make decisions.

First responders. The law provides that when a firefighter, paramedic, or emergency medical technician is exposed to a patient's body fluids in a manner that may transmit HIV or hepatitis, the patient will be deemed to have consented to testing for the viruses even though the person has not been notified. The law also provides that when a first responder is asked to transport someone with a communicable disease, a facility is required to inform the first responder as to the patient's condition and any precautions that need to be taken.

Virginia Indoor Clean Air Act. The law prohibits smoking in all indoor restaurants and bar and lounge areas in Virginia, requires the posting of "No Smoking" signs, and provides for a \$25 civil penalty for a violation of the provisions.

Home Ownership

Cancellation of property insurance policy upon foreclosure. The law authorizes the cancellation of a policy insuring an owner-occupied dwelling on grounds that the property secured by the policy has been sold pursuant to foreclosure of a deed of trust encumbering the property.

Homestead exemption. See Civil Law.

Mortgage Lender and Broker Act. The law prohibits a mortgage broker from failing to use reasonable skill, care, and diligence in exercising the broker's duty to make reasonable efforts to secure a mortgage loan that is in the best interests of the applicant, considering the applicant's circumstances and loan characteristics.

Mortgage loan originators. The law prohibits an individual from acting as, or holding himself out to the public as being, a mortgage loan originator on or after July 1, 2010, unless he has obtained a license from the State Corporation Commission.

Insurance

Coverage for prosthetics. The law requires health insurers to make available coverage for medically necessary prosthetic devices to replace a limb, and their repair, fitting, replacement, and components.

Small group health insurance. The law allows health insurers to sell group health insurance policies to employers with 50 or fewer employees that do not include all of the state mandated health insurance benefits; however, coverage for mammograms, pap smears, PSA testing, and colorectal cancer screenings is required.

Local Government

Annexation. The law extends from 2010 to 2018 the temporary restriction on city annexation authority, the granting of city charters, and county immunity proceedings.

Boards of zoning appeals variance standard. The law changes the standard by which a variance can be granted by eliminating the requirement for a showing of a hardship "approaching confiscation."

Derelict buildings. The law defines derelict buildings and authorizes local governments to provide real estate tax abatements and fee refunds if owners timely submit plans for demolition or renovation. The law also simplifies tax lien enforcement and blight provisions and encourages action on derelict buildings by adjusting time frames.

Graffiti abatement. The law permits courts to order any person convicted of unlawfully defacing property to pay full or partial restitution to the locality for costs incurred by the locality in removing or repairing the defacement.

Land use approvals. The law extends the period of validity for certain preliminary and recorded plats and

final site plans, as well as certain other land use approvals, to July 1, 2014.

Social Services & Child Welfare

Adult neglect and religious treatment. The law provides that an adult who is receiving religious nonmedical treatment or nursing care rather than medical care for a medical condition will not be considered "abused or neglected" where the treatment is provided in good faith, the treatment is in accordance with the religious practices of the adult receiving care, and the adult receiving care has made a written or oral consent to the treatment.

History of sexual abuse and child custody and visitation. The law provides that any history of sexual abuse must be considered as a factor in determining the best interests of a child for purposes of awarding custody or visitation.

Postadoption contact and communication. See Civil Law.

Unlicensed child day centers. The law reduces the required staff-to-child ratio for children ages 24 months to 6 years in child day care centers operated by religious institutions that are not required to be licensed by the Department of Social Services.

Virginia Child Protection Accountability System. The law creates the Virginia Child Protection Accountability System, which will collect and make available to the public information about the Department of Social Services' response to reported cases of child abuse in the Commonwealth.

Taxes

Earned income tax credit. See Business and Employment.

Power of attorney for tax matters. The law requires the Department of Taxation to provide to a power of attorney named by the taxpayer any written materials or documents that have been provided to the taxpayer. The Department must provide the documents to the power of attorney at the same time as they are provided to the taxpayer.

Sales and use tax exemption. The law exempts from sales and use tax the processing of meat, vegetables, or other foodstuffs when the purchasers, such as hunters and farmers, supply the food and it is consumed by the purchaser or his family, or when the purchaser is a nonprofit organization or donates the foods.

Virginia Tax Amnesty Program. The law authorizes the State Tax Commissioner to operate a tax amnesty program any time between July 1, 2009, and June 30, 2010. The program would allow any individual, corporation, estate, trust, and partnership that failed to file a state tax return or to pay any state tax that was due for any taxable year before January 1, 2008, to pay the tax due and have all penalties and one-half of the interest forgiven.

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Special License Plates & DMV

The laws authorize issuance of special license plates for:

Participants in **Operation Enduring Freedom.**

Members of the **Virginia State Defense Force.**

Supporters of the **Shenandoah National Park Trust.**

Supporters of the **Choose Life Virginia Fund.**

Supporters of tourism and conservation on the **Northern Neck.**

Tobacco Heritage plates for trucks, for-hire vehicles, and vehicles registered under the International Registration Plan.

Operation of a Vehicle

Text messaging while driving. The law prohibits operation of a motor vehicle on the highway while using a cell phone or other handheld personal communications device to send or receive text messages. Use of global positioning systems and emergency communications are exempted from the prohibition.



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