



“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:

2010 Changes to Virginia's Laws

This publication provides a brief summary of legislation passed by the 2010 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, 2010. The summaries were prepared by the staff of the Division of Legislative Services.

ABC

Assisted living facilities. The law adds a license exemption for any dining areas or private rooms of residents in a licensed assisted living facility that will allow the assisted living facility to provide alcoholic beverages to the residents at the facility. Under current law, no alcoholic beverages are allowed to be kept upon premises where food or refreshments are furnished for compensation.

Business and Employment

"Cramming" unauthorized services on telephone bills. The law prohibits a telephone service provider or billing agent from billing a customer for charges for products, goods, or services that the customer did not authorize. The law requires telephone service providers and billing agents to obtain verification of a customer's authorization before submitting charges for products, goods, or services to the billing carrier.

One-stop small business permitting program fees; exemption for veterans. The law exempts veterans from paying the Department of Business Assistance's handling fee when establishing a small business through the one-stop small business permitting program.

Personal identifying information on documents filed with State Corporation Commission. The law makes any person preparing documents to be filed with the clerk of the State Corporation Commission responsible for ensuring that the document or information does not contain:

- A social security number or other number on a driver's license.
- Information on credit cards or other electronic billing and payment systems.
- An individual's date of birth or parent's maiden name.
- Financial account numbers.

The law also authorizes the clerk of the Commission to remove such information from a document and to refuse to accept for filing any document that includes personal identifying information.

Prepaid electric utility service. The law authorizes electric cooperatives to provide optional prepaid metering. With prepaid service, electric service will terminate when the customer has incurred charges for electric service equal to the amount prepaid by the customer.

Sale of used building fixtures. The law requires dealers in secondhand building fixtures to retain records of identifying information about the seller or purchaser of the materials. The law requires the seller of an article to provide documentation to the dealer establishing that the seller lawfully possesses the article being sold. Dealers are required to keep the records for five years. If the dealer buys copper gutters, downspouts, or similar copper or aluminum materials, he is required to hold the articles for not less than 15 days following the date he gives the required notice of the transaction to the chief of police or sheriff.

Temporary licenses and certificates. The law authorizes the regulatory boards within the Department of Professional and Occupational Regulation to issue a temporary license or certification to an applicant who holds a comparable license or certification issued by another state. A temporary license or certification will be valid for not more than 45 days.

Veterans Skills Database established. The law requires the Virginia Employment Commission, in cooperation with the Department of Veterans Services and the Secretary of Commerce and Trade, to establish the Veterans Skills Database. The Database, free to both veterans and employers, will be an Internet-accessible database of veterans and their workforce skills for the purpose of marketing and promoting the workforce skills of veterans to potential employers.

Warranty registration cards. The law prohibits a seller of personal, family, or household goods from conditioning the terms or duration of a warranty, in connection with the sale of the goods, on the purchaser's returning a warranty registration card. These prohibitions do not apply if the requirement that the purchaser return a warranty registration card is conspicuously disclosed in any advertising and marketing materials that reference the goods' warranty.

Civil Law

Child and spousal support; vocational experts. The law allows a court to appoint a vocational expert to conduct an evaluation of a party in cases involving child support, spousal support, and separate maintenance where the earning capacity, unemployment, or underemployment of a party is in controversy.

Extension of protective orders. The law allows a person who has obtained a protective order in the case of family abuse or stalking to obtain an extension of that order for a period of two years. There is no limit on the number of extensions that may be requested.

Homestead deeds for personal property; previous filings. The law adds to the homestead deed for personal property form the following questions:

- How many homestead deeds has the householder previously filed?
- What was the exemption amount previously claimed on the prior homestead deeds?
- What were the jurisdictions for the previously filed homestead deeds?

Postadoption contact and communication agreements. The law provides that in any case of adoption, adoptive parents may enter into postadoption contact and communication agreements.

Use of commissioners in eminent domain cases. The law reinstates the option of the landowner to choose between commissioners and juries to hear an eminent domain case.

Courts and Criminal Justice

Delinquent children; loss of driving privileges. The law eliminates the authority of the court to give a restricted driver's permit, for travel to and from home and school when school-provided transportation is available, to a child who has lost his driving privileges for certain offenses, including alcohol, firearm, and truancy offenses.

Punishment and options for person convicted of nonpayment of child support. See Social Services.

Restricted permit; driving to church. The law adds driving to and from a place of religious worship one day per week at a specified time and place to the list of purposes for which a court may issue a restricted permit.

Telephone email or texting; use of profane, threatening, or indecent language. The law provides that any person who, when emailing by telephone or texting, uses profane, threatening, or indecent language is guilty of a Class 1 misdemeanor. Current law punishes this behavior when simply using a telephone or citizens band radio.

Education

Charter schools. This law makes changes to the approval process for establishing a charter school. Currently, local school boards have the final say in approving charter school applications. Under the new law, local school boards will still have the final say, but any time they deny an application they will have to put their reasons for doing so in writing. Also, the new law requires charter school applicants to first submit their applications to the State Board of Education to make sure they meet the minimum criteria.

College laboratory partnership schools. This law allows any public college or university that has a teacher training program to open a college laboratory partnership school. These schools would be public schools, open to any resident of the Commonwealth, which would be governed by a contract between the school and the State Board of Education.

Virtual schools. This law gives the Board of Education authority to regulate online school courses and programs. These programs already exist in Virginia, but this law sets out the framework for making sure these programs meet certain standards.

Elections

Absentee voting; availability of ballots. The law requires the general registrar, once the printed ballots are available, to send an absentee ballot within three business days of receiving a properly completed application. Failure to do so through willful neglect of duty and with malicious intent is a Class 1 misdemeanor.

Deadlines related to absentee ballots; write-in absentee ballots. The law requires that absentee ballots be available 45 days before most elections. The law also allows military and other voters outside of the country entitled to vote absentee to use a write-in absentee ballot for all elections, not just federal elections. The ballot may also serve as a voter registration application for state and local elections. Absentee ballots cast by such voters received after the polls close but at least two business days before the State Board of Elections ascertains the results of the elections may now be counted.

In-person absentee voting. The law expands who is considered a member of a voter's immediate family, and whose death or hospitalization permits the voter to submit a late application for in-person absentee voting, to include adopted children, legal guardians, and siblings whether they are of whole or half blood.

Energy

Offshore energy resource development. The law states that the policy of the Commonwealth is to support the exploration, development, and production of oil and natural gas 50 miles or more off Virginia's coast. Prior to the enactment of this law, the Commonwealth's policy was to support exploration for offshore natural gas.

Virginia Offshore Wind Project Development Authority. The law creates the Virginia Offshore Wind Development Authority to facilitate and support the development of the offshore wind industry and wind-powered electric energy facilities located off the coast of the Commonwealth beyond the Commonwealth's three-mile jurisdictional limit.

Environment and Natural Resources

Aquaculture opportunity zones. The law requires the Marine Resources Commission to establish by regulation aquaculture opportunity zones for the placement of temporary protective enclosures off the shores of the Northern Neck, Middle Peninsula, and Tangier Island for the propagation of commercial shellfish.

Coalbed methane gas. The law provides that a conveyance, reservation, or exception of coal does not include coalbed methane gas. The presumption does not affect:

- A coal operator's right to vent coalbed methane gas for safety purposes or release coalbed methane gas in connection with mining operations.
- Any settlement of any dispute, or any judgment or governmental order, as to the ownership or development of coalbed methane gas made or entered prior to the enactment of this law.

The law also requires the Auditor of Public Accounts to conduct an operational and performance review of the accounting policies and procedures for the collection and disbursement of the escrow accounts by the Virginia Gas and Oil Board. The law became effective upon passage due to an emergency clause.

Fishing license exemption. The law exempts active duty military personnel who are residents and on leave from having to obtain a basic fishing license so long as they can show proof that they are on leave. The exemption does not apply to fishing in waters stocked with trout.

Stormwater management facilities; liability. The law provides that a common interest community will enjoy limited liability protection relating to a stormwater management facility located on property owned by that community if certain conditions are met. The immunity granted by the law does not extend to actions or omissions by the landowner constituting intentional or willful misconduct or gross negligence.

Fire Prevention

Pyrotechnicians and fireworks operators. The law allows the State Fire Marshal to establish a certification program for pyrotechnicians or fireworks operators.

Firearms

Concealed handgun permits; disqualifying convictions. The law provides that a conviction from another state for driving while intoxicated or for drunkenness in public within the preceding three years disqualifies an individual from obtaining a concealed handgun permit.

Concealed handguns; restaurants; penalty. The law allows a person with a concealed handgun permit to carry a concealed handgun onto the premises of a restaurant or club and prohibits the person from consuming alcoholic beverages while on the premises. A person who consumes alcohol in violation of the provisions of the law is guilty of a Class 2 misdemeanor.

Possession of concealed weapons in vehicles. The law creates a new exemption to the general prohibition against carrying concealed weapons by allowing a person who may lawfully possess a firearm to carry a handgun in a private motor vehicle or vessel if the handgun is secured in a container or compartment.

Renewal of concealed handgun permits. The law allows a person who previously has been issued a Virginia concealed handgun permit to submit an application to renew the permit via the United States mail.

Health

Board of Nursing; guidelines on administration of drugs to public school students with epilepsy and other seizure disorders. The law directs the Board of Nursing to finalize revisions to guidelines for seizure management, including the list of rescue medications, for students with epilepsy and other seizure disorders before August 1, 2010. The law also requires the Board of Education to develop a standardized form to be used for authorizing administration of rescue medications in public schools.

Funeral services; handling of human remains. The law establishes guidelines for the handling of dead human bodies, including requirements related to covering and storage of the body. This law also requires that if a body is to be stored for more than 10 days prior to

disposition at a location other than the funeral service establishment, the funeral service establishment must disclose the location where the body is to be stored and the method of storage.

Health professions; certain consumer-directed services.

The law makes clear that nothing in the Code of Virginia will prevent any person from performing state or federally funded health care tasks that are typically self-performed for an individual consumer who lives in a private residence and who, because of disability, is unable to perform the tasks but is capable of directing the appropriate performance of such tasks. This includes the administration of non-oral, non-topical drugs.

Home health aides; drug testing. The law requires home health care organizations to establish policies for maintaining a drug-free work place, which may include drug testing of employees. This law also requires home health care organizations to report any positive result of any drug test to the health regulatory boards responsible for licensing, certifying, or registering the person to practice, if any.

Schedule VI prescriptions; certain infectious diseases.

The law authorizes a health care practitioner to prescribe Schedule VI antibiotics and antiviral drugs to a person in close contact with a diagnosed patient of the practitioner without first conducting a physical examination of the person when certain conditions are met.

Housing

Display of the United States flag. The law amends the Virginia Condominium Act and the Virginia Property Owners' Association Act to provide that a unit owners' or property owner's association cannot prohibit a unit or lot owner from displaying upon certain property the flag of the United States whenever the display is in compliance with the federal Flag Code.

Stormwater management facilities; liability; common interest communities. See Environment and Natural Resources.

Uniform Statewide Building Code. The law increases the civil penalty for a second or subsequent violation from \$150 to \$350 and the total for violations arising from the same operative set of facts from \$3,000 to \$4,000.

Virginia Defective Drywall Correction and Restoration Assistance Fund.

This law was created to assist in the correction and restoration of residential property affected by the environmental problems attributable to defective drywall used in new construction or renovation that occurred between 2001 and 2008. The Fund will be administered by the Virginia Resources Authority and the Department of Housing and Community Development and is intended to provide loans and grants to pay the reasonable and necessary costs associated with:

- The remediation of a contaminated property to remove hazardous substances, hazardous wastes, or solid wastes.
- The stabilization or restoration of the structures.
- The demolition and removal of the existing structures or other work necessary to remediate or reuse the real property.

Insurance

Dental plans; reimbursement for health care services. The law prohibits a dental insurance provider contract from establishing the fees that a dentist or oral surgeon is required to accept for performing services that are not covered by the dental plan.

Group life insurance coverage. The law allows coverage under a group life insurance policy to be extended to insure any person in whom the insured group member has an insurable interest, as may mutually be agreed upon by the insurer and the group policyholder.

Requirement to obtain individual health insurance coverage. The law provides that a resident of the Commonwealth will not be required to obtain or maintain a policy of individual insurance coverage, with certain exceptions. The measure also states that no provision of Title 38.2 of the Code of Virginia renders a resident liable for any penalty, assessment, fee, or fine as a result of the failure to procure or obtain health insurance coverage.

Local Government

Assisted living facilities. The law provides that local zoning ordinances for all purposes will consider a residential facility, where no more than eight elderly or disabled persons reside with one or more resident counselors or other staff persons, to be a residential occupancy by a single family.

Noise ordinance penalties. The law authorizes localities to adopt civil penalties for violations of noise ordinances. The penalty for an initial violation cannot exceed \$250 and penalties for subsequent violations cannot exceed \$500.

Zoning provisions for temporary family healthcare structures. The law provides that zoning ordinances for all purposes consider temporary family healthcare structures (i) for use by a caregiver in providing care for a mentally or physically impaired person and (ii) on property owned or occupied by the caregiver at his residence as a permitted accessory use in any single-family residential zoning district. The structures will not require a special use permit or be subjected to any other local requirements beyond those imposed upon other authorized accessory structures. A caregiver will be either related by blood, marriage, or adoption to or the legally appointed guardian of the mentally or physically impaired person who is receiving the care.

Social Services

Adoption assistance. The law amends eligibility and application process requirements for adoption assistance and provides for separate maintenance, nonrecurring expense, and state special services payments. This law also amends provisions governing changes in the amount of maintenance payments.

Advance medical directives. The law clarifies authority of an advance directive in cases in which a person is subject to an emergency custody, temporary detention, involuntary admission, or mandatory outpatient treatment order. This law also eliminates the requirement that a second physician or licensed clinical psychologist provide a written certification that a patient is incapable of making

an informed decision in cases in which a patient is unconscious or experiencing a profound impairment of conscious function. The law also allows a person who has exhibited special care and concern for a patient and is familiar with the patient's beliefs and values to make health care decisions on that patient's behalf when certain conditions are met, except in cases in which the proposed treatment involves the withholding or withdrawing of a life-prolonging procedure. Finally, this law provides that a public guardian may authorize admission of an incapacitated person to a mental health facility in certain situations.

Child support orders; emergency. The law eliminates the authority of the Department of Social Services to require noncustodial parents of children who receive Medicaid or Family Access to Medical Insurance Security Plan assistance to pay medical support payments.

Postadoption contact and communication agreements. See Civil Law.

Punishment and options for person convicted of nonpayment of child support. The law allows for the issuance of a restricted driver's license to individuals who have been convicted of DUI or another offense for which a restricted license may be issued, for driving to and from appointments required as part of participation in a court-ordered intensive case monitoring program for child support. The law also prohibits the DMV from renewing a driver's license or ending suspension of a driver's license that was suspended because of nonpayment of child support until the DMV has received certification from the Department of Social Services that the person has completed or is participating in a court-ordered intensive case monitoring program. The law also establishes the option of home/electronic incarceration of a person convicted of nonsupport.

Temporary Assistance for Needy Families (TANF); applications. The law allows TANF applicants to continue to receive any financial support payments to which they were entitled, either on their own behalf or on behalf of any other family member, prior to beginning to receive TANF assistance.

Taxes

Land preservation tax credit. The law reduces from \$100,000 to \$50,000 the amount of the land preservation tax credit that may be claimed for taxable year 2011.

Tobacco products tax; moist snuff. The law changes the taxation of moist snuff. The new law taxes moist snuff at a rate of \$0.18 per ounce. Under the old law, moist snuff was taxed at the rate of 10 percent of the manufacturer's sales price.

Veterans

Veterans Services. The law requires the Commissioner of the Department of Veterans Services to establish and implement a compact with Virginia's veterans with the goal of making Virginia America's most veteran-friendly state.

Virginia National Guard. The law allows members of the Virginia National Guard called to state active duty by the Governor to continue their health care coverage, life insurance, or long-term care insurance at their expense.

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Special License Plates and DMV

Special License Plates

Special license plates. The law authorizes the issuance of special license plates to supporters of the Virginia Kids Eat Free program; to supporters of the Professor Garfield Foundation; bearing the legend: TRUST WOMEN/RESPECT CHOICE; bearing the legend: BUY LOCAL; to supporters of the Virginia Recycling Association; to supporters of the Washington Capitals hockey team; and bearing the legend: FRIENDS OF COAL.

Operation of a vehicle

Highway speed limits. The law increases the general highway speed limit on highways from 65 mph to 70 mph where indicated by lawfully placed signs, erected subsequent to a traffic engineering study and analysis

of available and appropriate accident and law-enforcement data.

"Move-over" law. The law requires drivers on a four-lane highway to yield the right-of-way when approaching vehicles displaying flashing blue, red, or amber lights by moving to a lane not adjacent to the vehicle displaying flashing blue, red, or amber lights if possible. The offense is punished as a traffic infraction, formerly a Class 1 misdemeanor. A second or subsequent violation, when the violation involves a vehicle with flashing, blinking, or alternating blue or red lights, is punishable as a Class 1 misdemeanor. The provisions do not apply in highway work zones.

Safety belt use for persons under 18 years of age. The law requires safety belt use by those less than 18 years of age who are in the rear seats of motor vehicles.



Virginia Division of Legislative Services

910 Capitol Street, 2nd Floor

Richmond, Virginia 23219

(804) 786-3591

E. M. Miller, Jr., Director

R.J. Austin, Manager, Special Projects

Mindy Tanner, Editor/Publisher

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Division of Legislative Services

910 Capitol Street, GAB, 2nd Floor

Richmond, Virginia 23219

