

Session Highlights 2004

Virginia Division of Legislative Services

Agriculture

Passed

Secretary of Agriculture and Forestry. The Secretary shall be responsible to the Governor for the following agencies: Department of Forestry, Department of Agriculture and Consumer Services, Virginia Agricultural Council, and Virginia Marine Products Board. *Position dependent on funding in the 2004 Appropriation Act. Absent such funding, position will commence with term of next Governor (2006).*

Commerce

Passed

Electric Utility Restructuring Act; extension of rate caps. Among its numerous provisions, the bill extends until December 31, 2010, the rate caps currently in place for incumbent electric utilities. Limits Dominion Virginia Power to seeking only one adjustment in its fuel factor, which adjustment may be sought after July 2007. Creates incentives for expanded municipal aggregation and for the construction of a coal-fired generation facility in the coalfield region of Virginia.

Public service companies; limited liability companies. Authorizes any Virginia limited liability company that is issued a certificate of public convenience and necessity by the SCC authorizing it to furnish telecommunications services, and that seeks to construct or acquire facilities for use in providing the service, to enter upon property in order to conduct examinations and to acquire property by the exercise of eminent domain. Such powers are currently granted to public service corporations. However, any limited liability company that was certificated to provide telecommunications service prior to July 1, 2004, (i) will not have the power of eminent domain until the SCC specifically authorizes it to exercise such power, and (ii) will not be authorized to exercise the

power of eminent domain with respect to any real property that is the subject of any action for trespass or related cause of action in which it is alleged that the limited liability company entered upon and damaged the property, unless the SCC finds that the proceeding has been settled or otherwise dismissed.

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 aggrieved persons will not be able to bring a private cause of action.

Failed

Product liability. Exempts manufacturers or sellers from liability for claims of injury due to voluntary use of a product containing open and obvious dangers, when the injury was directly caused by the open and obvious dangers of that product. Such products are limited to (i) food products made with sugar, butter or hydrogenated oils or trans fats, (ii) tobacco, or (iii) firearms. Excludes from the exemption actions based on manufacturing defects or breach of an express warranty.

Carried Over

Air emissions reductions. Establishes a schedule by which investor-owned public utilities that own or operate coal-fired generating units are required to reduce by specific amounts their emissions of oxides of nitrogen, sulfur dioxide and mercury.

Constitutional Amendments

Passed

The following proposed amendments will appear on the ballot at the November 2004 election for voter approval:

Effective dates of redistricting. The proposed amendment provides explicitly that the members in office when a decennial reapportionment law is enacted shall complete their

terms of office and continue to represent the districts from which they were elected. Also specifies that any vacancy occurring during such terms will be filled from the same district that elected the member whose vacancy is being filled.

Succession to the office of Governor. Expands the list of successors to the office of Governor that presently includes the Lieutenant Governor, Attorney General, and Speaker of the House of Delegates, in case of an emergency or enemy attack that prevents the House of Delegates from meeting to elect a governor. The additional successors would include successor speakers, the President pro tempore of the Senate, and the Senate majority leader.

Failed

Restoration of civil rights for felons. Authorizes the General Assembly to provide by law for the restoration of civil rights for persons convicted of nonviolent felonies who meet the conditions prescribed by law.

Courts

Passed

"21-day rule." Establishes a procedure for a convicted felon to petition the Court of Appeals for a writ of actual innocence based on nonbiological previously unknown or unavailable 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. Creates a RICO act for Virginia under which various violations of the alcoholic beverage, banking, and criminal law become racketeering if conducted by persons in concert for the purpose of racketeering. Racketeering is punished as a felony with confinement of 5-40 years and a fine of not more than \$1 million. A second or subsequent offense is a Class 2 felony and a fine of not more than \$2

Session Highlights summarizes significant legislation considered by the 2004 Regular and Special Sessions of the General Assembly, as selected by the staff of the Division of Legislative Services. This brief overview covers Assembly and Governor's actions through May 21, 2004.

million. The bill punishes engaging in illegal money transmission as a Class 5 felony. The Attorney General is authorized to prosecute violations of the Act.

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

Arrest and detention of illegal aliens. Provides that a law-enforcement officer may, in the course of acting upon reasonable suspicion that an individual has committed or is committing a crime, detain the individual without a warrant upon receiving confirmation from the Bureau of Immigration and Customs Enforcement that the individual is an illegal alien and has previously been convicted of a felony in the United States and deported or left the United States after such conviction. Unless a warrant is obtained, the person may be detained only until taken into federal custody. 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.

Failed

Capital punishment for minors. Restricts the death penalty to those who are 18 years of age or older at the time of the capital offense. Currently, the age is 16 or older.

Gun show criminal records check. Adds a definition of "firearms show vendor" and requires that a criminal history record information check be performed on the prospective transferee before the vendor may transfer firearms at a gun show. Under current law, only licensed dealers must obtain such a check.

Carried Over

Sexual offenses. In order to comply with Supreme Court's *Lawrence v. Texas* decision, the bill repeals the statute making fornication a Class 4 misdemeanor and amends the lewd and lascivious behavior statute to specify that the behavior is illegal when performed in a public place. Without repealing the existing crimes against nature statute, the bill proposes a new statute that will ensure that such behavior is illegal when committed in a public place.

Education

Passed

At-Risk Student Academic Achievement Program. Creates the program to provide noncompetitive grants to public school divisions to implement research-based programs or programs identified as best practices that are designed to (i) improve the academic achievement of at-risk public school students on the

SOLs; (ii) decrease the rate of dropout among at-risk public school students; and (iii) increase the number of such students obtaining the advanced studies diploma.

Brown v. Board of Education Scholarship Program and Fund. Creates the program for the purpose of assisting students who were enrolled in the public schools of Virginia between 1954 and 1964, in jurisdictions in which such 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.

Charter School Excellence and Accountability Act. Among numerous amendments to the charter schools statute, the bill (i) requires public charter schools to maintain high standards for teachers and administrators; (ii) allows charter schools to contract

with private institutions of higher education for school facilities, services, and other undertakings, including construction; (iii) allows charter applicants to submit the proposed charter agreement to the Board of Education for review and comment, and to require inclusion of the Board's findings in the charter application to the local school board; (iv) deletes the authority of school boards to limit the number of charter schools within the division and the statutory cap on the maximum number of charters; (v) deletes the requirement that half the charter schools in the division be designed to benefit at-risk pupils, and instead directs school boards to give priority to applications designed to benefit these students, particularly those at-risk students currently served by schools that have not achieved full accreditation; and (vi) increases the maximum charter term from three to five years.

Family life education. Includes in curriculum guidelines for family life education the 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.

Failed

No Child Left Behind. Urges Congress to amend the No Child Left Behind Act immediately to include a waiver from its provisions for school accountability for states, such as Virginia, that have successfully raised student achievement through their own standards and accountability reforms, and that this waiver be available to states so long as they maintain these proven standards and accountability programs.

Illegal aliens in higher education prohibited. Provides that public institutions of higher education may not knowingly accept for enrollment any illegal alien, and directs each institution, upon discovering an enrollment of an illegal alien, to provide for the prompt dismissal of any such person from the institution.

SOLs and diplomas. Provides that the results of any SOL assessments cannot be considered in the awarding, or refusal to award, of a standard diploma until all public schools in Virginia have achieved full accreditation.

Vetoed

Qualifications for providing home instruction. Requires persons providing home instruction to hold a high school diploma. Under current law, such individuals must hold a baccalaureate degree.

Elections

Failed

Voter registration by political party in primary elections. Adds party affiliation to the information that an applicant is asked to provide when registering to vote. The applicant may indicate that he is an independent. Voters registered prior to January 1, 2005, will be des-

DUI

Passed

Increased penalties. DUI 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, previously excepted, will be reported to the CCRE.

Bail. Creates a presumption against bail for certain repeat DUI offenders.

License suspension for refusal. Criminalizes refusal to take a blood or breath test. 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. Elevated blood alcohol content (BAC) levels are redefined from .25 to .20 and from .20 to .15 for purposes of additional penalties.

Administrative license suspension. Lengthens administrative license suspension for a second DUI charge to 60 days; for a third or subsequent DUI charge to the trial date.

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

Vehicle forfeiture. Allows forfeiture of a vehicle solely owned and operated by an individual convicted of a third or subsequent DUI offense.

igned as independent unless they provide a political party designation in writing to the general registrar. Voters may change their party affiliation or independent status by written notice at any time except the 28 days before an election when the registration records are closed. The state party chairman of each political party must notify the State Board by January 31 of each year of the party rules governing who may participate in the party primary.

Primaries for statewide offices. Requires political party candidates for the offices of Governor, Lieutenant Governor, and Attorney General to be nominated by a statewide primary.

Carried Over

Campaign Finance Disclosure Act; reports of large pre-election in-kind contributions and independent expenditures. The bill requires the maker of the in-kind contribution or independent expenditure (of more than \$5,000 in a statewide election or \$2,500 in other elections) and the recipient of the in-kind contribution to file a campaign disclosure report on the next business day. The bill provides for a civil penalty of \$2,500 for the first failure to report and \$5,000 for each subsequent failure in an election cycle.

Health

Passed

Virginia Birth-Related Neurological Injury Compensation Act. Increases assessments for participating physicians, hospitals, and non-participating physicians on an incremental basis beginning in 2005 to maximums of \$5,500, \$200,000, and \$300, respectively. The bill also eliminates the authority to pay attorney's fees to applicants who are not admitted into the birth injury fund program.

Communicable diseases; quarantine and isolation. Sets out a procedure for the State Health Commissioner to issue orders of quarantine or isolation when a person or persons or an affected area in Virginia have been known to be exposed to or to be infected with a communicable disease of public health threat.

Foreign prescription drugs. Provides that any person who knowingly assists another in procuring, for compensation, prescription drugs from a pharmacy or other source he knows is not licensed, registered or permitted by the Board shall be guilty of a Class 1 misdemeanor and for a second or subsequent offense, a Class 6 felony. This bill will strengthen the laws to permit prompt action against unregulated Internet mail-order pharmacies and storefront pharmacies that broker prescription drugs from other countries.

Licensure conditions for certain methadone clinics. Prohibits the granting of an initial license to a provider of treatment for persons with opiate addiction through the use of the controlled substance, methadone, or other opioid replacements, if such provider is to be located within a one-half mile of a public or private day care center or public or private K-12 school, except when such service is provided by a hospital licensed by the Board of Health or the Commissioner of the Department of Mental Health, Mental Retardation or Substance Abuse Services or owned or operated by an agency of the Commonwealth.

Failed

Lay midwives. Provides for the licensure by the Board of Medicine of those persons who have obtained the Certified Professional Midwife credential to practice midwifery pursuant to regulations of the Board of Medicine.

Insurance

Passed

Health insurance for dependent children. Allows insurers, at the policyholder's election, to extend coverage under a group accident and sickness insurance policy to include any child of an insured group member, regardless of the child's age.

Flood insurance. Requires insurers issuing a new or renewal contract or policy of fire insurance that excludes coverage for damage due to flood, surface wa-

ter, waves, tidal water, or any other overflow of a body of water, to provide written notice to the policyholder that contents coverage may be available with the flood policy for an additional premium.

Homeowners insurance deductibles. Requires an insurer who unilaterally changes the deductible on a policy insuring an owner-occupied dwelling to provide written notice to the insured stating that the deductible has been changed and explaining how the new deductible will be applied.

Homeowners insurance; dangerous animals. Authorizes the issuer of a homeowner's policy, with the insured's written consent, to exclude from coverage any liability resulting from an injury caused by a dangerous or vicious animal owned by or in the care, custody, or control of the insured.

Homeowners insurance; nonrenewal. Prohibits an insurer from refusing to renew a homeowners insurance policy solely because a covered claim was made more than 60 months prior to the policy expiration date.

Carried Over

Health insurance coverage. Allows coverage under a group accident and sickness insurance policy to be extended to insure any person who the insured group member elects, provided such extension of coverage is agreed to by the insurer and the group policyholder. The measure also specifically authorizes coverage under such group policies to be extended to children of the insured group member who are older than 19, or 25 if a full-time student, as may mutually be agreed upon by the insurer and group policyholder.

Natural Resources

Passed

Stormwater management. Consolidates Virginia's stormwater management programs within the Department of Conservation and Recreation, and transfers oversight responsibilities to the Virginia Soil and Water Conservation Board from the Board of Conservation and Recreation.

Air, waste, and water permit fees. Assesses a combination of permit application fees, annual fees, and permit maintenance fees that will generate approximately \$6 million for the funding of air, water and waste permit programs at the Department of Environmental Quality (DEQ). Also requires DEQ to evaluate and implement measures to improve the long-term effectiveness and efficiency of its programs.

Royalties for use of state-owned bottomland. Exempts riparian owners of commercial facilities (i) engaged in ship construction or repair, (ii) providing services to the ship cargo industry, and (iii) engaged in the business of selling or servicing watercraft from having to pay any rents or royalties to the Virginia Marine Resources Commission. The owners of such

Abortion/Contraception

Most bills having to do with abortion or the "morning after pill" failed. Among the more significant:

Fetal pain relief. Requires, in an abortion performed after the first trimester, that the unborn child be anesthetized in a manner suitable for patients undergoing amputation. A physician who performs an abortion without first anesthetizing the fetus is guilty of a Class 1 misdemeanor.

Morning-after pill in public institutions of higher education. Prohibits any public institution of higher education in the Commonwealth from making available the morning-after pill in its delivery of health care services to students.

Morning-after pill—parental consent. Requires a prescriber to obtain parental consent prior to prescribing Plan B, or any other form of the morning-after pill, to an unemancipated minor. Prescribing without consent is a Class 1 misdemeanor.

Licensure of abortion clinics. Requires all abortion clinics, defined as any facility, other than a hospital or an ambulatory surgery center, in which 25 or more first trimester abortions are performed in any 12-month period, to be licensed and to comply with the requirements currently in place for ambulatory surgery centers.

facilities will still have to pay a fee between \$25 to \$100 for the use of state bottomlands.

Failed

Newport News reservoir. Authorizes the Virginia Marine Resources Commission to convey a permanent easement of approximately 0.9 acres in the Mattaponi River, in King William County, to the City of Newport News for the purpose of constructing a raw water intake structure to provide water supply for the Newport News reservoir project.

Social Services

Failed

Mandatory reporting of child abuse and neglect by clergy. Requires any regular minister, priest, rabbi, or accredited practitioner to report suspected child abuse or neglect to a local department of social services or the Department of Social Services' toll-free child abuse and neglect hotline. Exempts from the mandatory reporting requirement information required by the doctrine of the religious organization or denomination to be kept in a confidential manner and information that the practitioner would not be required to disclose in court testimony pursuant to other Code provisions.

State Government

Passed

Freedom of Information Act exclusions. Provides that public access to meetings of the General Assembly, except floor sessions and committee or subcommittee meetings, and conference committee meetings, shall be governed by rules established by the Joint Rules Committee. Floor sessions and committee and subcommittee meetings will continue to be open to the public. Political caucuses are excluded.

Virginia Racing Commission; satellite facilities. Increases the number of satellite facilities (off-track betting) that the Virginia Racing Commission may authorize from six to 10.

Sunday sales at ABC stores. ABC stores in Northern Virginia and Tidewater may be open on Sunday for the sale of alcoholic beverages after 1:00 p.m. The bill requires the ABC Board to adopt regulations to implement these provisions.

Civil unions. Declares that Virginia does not recognize a marriage, civil union, partnership contract or other arrangement purporting to bestow any of the privileges or obligations of marriage under the laws of another state or territory of the United States unless such marriage conforms to Virginia law.

Failed

Restricting recipients of home loans. Requires the Housing Development Authority to develop regulations providing that single-family mortgage loans may be made to more than

one person only if the persons to whom the loan is to be made are related by blood, marriage, or adoption.

Transportation

Passed

Mobile infrared transmitters. Prohibits operation of a motor vehicle when the vehicle is equipped with a mobile infrared transmitter used to preempt or change the signal given by a traffic light. The bill also makes it illegal to sell any of these devices in the Commonwealth, except for uses permitted by the bill.

Driver's license renewals; vision examinations.

Provides that no driver's license 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 passed vision examination, made within 90 days.

Golf carts. Authorizes limited over-the-road operation of golf carts and utility vehicles and reorganizes present provisions dealing generally with golf carts and their operation.

Utility trailers.

Requires that reflectors or reflectorized material be affixed to the rear of certain utility trailers and requires the Transportation Research Council to study whether the bill reduces the frequency with which these utility trailers are struck from behind by other vehicles.

Failed

Possession of open container of alcohol in a motor vehicle. Provides that no person shall possess an alcoholic beverage in the passenger area of a motor vehicle in other than the manufacturer's unopened, original container. The bill punishes violation with a civil penalty of \$25.

Carried Over

Seat belts. Makes safety belt violations primary offenses. The bill also provides that a law-enforcement officer may not search or inspect a motor vehicle, its contents, the driver, or a passenger solely because of a safety belt violation, unless supported by probable cause or consent.

Photo-red. Expands photo-monitoring systems for traffic signal enforcement to all of Virginia instead of specified localities.

Unemployment

Passed

Unemployment compensation; benefit charges. Provides that an employer shall 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

Taxation

During its 2004 Special Session, the General Assembly approved several taxation measures, including the following:

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.

Groceries. The sales tax on groceries will **decrease** from 4.0 percent to 3.5 percent on July 1, 2005, to 3.0 percent on July 1, 2006, and to 2.5 percent on July 1, 2007.

Income tax. Beginning with the 2005 tax year, the so-called "marriage tax" will be eliminated. Beginning with the 2006 tax year, the **personal exemption** amount will increase from \$800 to \$900. **Tax deductions for seniors** will be subject to "means testing," and higher income seniors will lose some or all of the deduction. For seniors age 65 or over on January 1, 2004, there will be **no change** in their \$12,000 deduction. For seniors age 62 or over on January 1, 2004, there will be **no change** in their \$6,000 deduction; however, the latter group will be subject to the means test when they turn 65.

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.

Car tax cap. Beginning in 2006, the amount that the Commonwealth will reimburse localities for car tax relief will be capped at \$950 million per year.

benefit charges, not to exceed four weeks, will be assigned to the pool tax.

Carried Over

Unemployment compensation; military spouse. Provides that good cause for leaving employment exists if an employee voluntarily leaves a job to accompany his spouse to a new military assignment from which the employee's place of employment is not reasonably accessible. Benefits paid to qualifying claimants shall be charged against the pool rather than against the claimant's employer.

Unemployment compensation; offset for retirement benefits. Eliminates the offset for Social Security or Railroad Retirement Act benefits during periods when the unemployment trust fund has a solvency level of 50 percent or more. When the trust fund's solvency level is below 50 percent, weekly unemployment benefits will continue to be reduced by 50 percent of the amount of such retirement benefits.