

Session Highlights 2005

Virginia Division of Legislative Services

Constitutional Amendments

Passed

Marriage. Provides "that only a union between one man and one woman may be a marriage valid in or recognized by this Commonwealth and its political subdivisions."

Failed

Governor's term of office. Permits the Governor to succeed himself in office. The amendment allows two four-year terms (either in succession or not in succession) but prohibits election to a third term.

Transportation Funds. Requires the General Assembly to maintain permanent and separate Transportation Funds to include the Commonwealth Transportation Fund, Transportation Trust Fund, and Highway Maintenance and Operating Fund.

Religious freedom. Amends the current religious freedom provisions of the Virginia Constitution to "secure further the people's right to acknowledge God"; to permit prayer and the recognition of "religious beliefs, heritage, and traditions on public property, including public schools"; and to prohibit the Commonwealth and its political subdivisions, including public school divisions, from composing school prayers or requiring individuals to "join in prayer or other religious activity."

Virginia Redistricting Commission. Establishes the Virginia Redistricting Commission to redraw Congressional and General Assembly district boundaries after each decennial census.

Car tax. Exempts privately owned motor vehicles used for nonbusiness purposes from property taxes.

Sessions of the General Assembly. Provides that the General Assembly sessions convened in odd-numbered years shall be long sessions and sessions convened in even-numbered years shall be short sessions, reversing the present schedule.

Courts

Passed

Execution of pregnant inmate. Requires the Department of Corrections to promulgate regulations assuring that no inmate will be executed while she is pregnant.

Possession of methamphetamine, methcathinone, amphetamine, or amphetamine precursors. Provides that any person found with two or more specified chemical agents or precursors with intent to manufacture methamphetamine, methcathinone, or amphetamine is guilty of a Class 6 felony.

Penalties for methamphetamine manufacture. Increases the minimum penalty for manufacturing methamphetamine and imposes enhanced punishment for a second or subsequent offense, including three years mandatory minimum imprisonment for a third or subsequent offense. The bill also provides that any adult who maintains a custodial relationship over a child under the age of 18 and who knowingly allows that child to be present in the same dwelling, structure or vehicle during the manufacture of methamphetamine shall be imprisoned for not less than 10 nor more than 40 years to be

served in addition to and consecutively with any other sentence.

Underage drinking and possession of alcohol. Clarifies the provisions of the crime of underage drinking and alcohol possession. The bill criminalizes underage consumption and punishes anyone who aids or assists in providing alcohol to an underage person with a Class 1 misdemeanor.

Eminent domain; right of entry to inspect. Modifies the provisions associated with a condemnor's entry onto property by (i) expanding the information provided in the initial request for permission to inspect and strengthening delivery requirements; (ii) requiring that the notice of intent to enter be posted or otherwise delivered to the owner in person, in addition to being sent by certified mail; and (iii) providing that if the owner files an action to recover damages caused by entry and is awarded judgment in an amount 30 percent or more than the condemnor's final written offer, or if the court finds that the condemnor maliciously, willfully or recklessly damaged the owner's property, the court may award the owner reasonable court costs, attorney fees, and fees for up to three expert witnesses testifying at trial.

Eminent domain; acquisition of property. Requires that a state agency's acquisition of real property be conducted in accordance with provisions that are only precatory under current law, including that the state agency establish an initial amount that is no less than the agency's approved appraisal of the fair market value of the property and that no owner can be required to surrender possession

Session Highlights summarizes significant legislation considered by the 2005 General Assembly, as selected by the staff of the Division of Legislative Services. This brief overview of the Session covers Assembly actions through adjournment sine die on Sunday, February 27, 2005.

until the state agency pays the agreed purchase price or deposits funds with the court.

Eminent domain; wetlands mitigation.

Prohibits condemnation of any property for compensatory wetlands mitigation unless (i) the property sought to be acquired is located within the same locality as the project affecting wetlands, or (ii) the governing body of the locality where the property sought to be acquired consents to its acquisition for such purpose. The prohibitions do not apply to property acquired by the Commonwealth Transportation Commissioner pursuant to its power of eminent domain.

Uniform Trust Code. Sets out the Uniform Trust Code, which was finalized by the National Conference of Commissioners on Uniform State Laws in 2000 and is the first national codification of the law of trusts. The bill is effective July 1, 2006.

Circuit court civil actions. Creates a single form of pleading for civil actions. Legal and equitable claims will remain distinct, and the situations where issues are heard by a jury are unchanged. The bill is scheduled to become effective January 1, 2006, and has been endorsed by the Judicial Council of Virginia.

Failed

Death penalty. Abolishes the death penalty for all Class 1 felonies committed on or after July 1, 2005.

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 at the time of the offense. [*Referred to the Crime Commission for study.*]

Assessment of fees by DMV on bad drivers.

Requires the courts to impose, in addition to any other penalties imposed, civil penalties on drivers convicted of certain offenses: \$100 for speeding at least 15 but not more than 19 miles per hour above the posted speed, \$250 for driving while driver's license suspended or revoked, \$300 for reckless driving or aggressive driving, and \$500 for driving while intoxicated. These fees will be used to support issuance of bonds whose proceeds are to be used for transportation construction, reconstruction, maintenance, maintenance replacement, and/or improvement projects.

Capital murder by members of criminal gangs. Provides that the willful, deliberate, and premeditated killing of any per-

son by another pursuant to a membership requirement of, or at the direction or order of a member of, a criminal street gang is capital murder. [*Referred to the Crime Commission for study.*]

Limits on purchase of pseudoephedrine.

Provides that only a licensed pharmacist shall dispense, sell or distribute any compound, mixture, or preparation containing any detectable quantity of pseudoephedrine, and that any person purchasing, receiving, or otherwise acquiring any such compound, mixture, or preparation shall produce a photo identification, sign a written log showing the date of the transaction, name of the person, and the amount of the compound, mixture, or preparation.

Transfer of firearms. 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.

Education

Passed

No Child Left Behind Act. Directs the Board of Education to seek waivers from compliance with provisions of the No Child Left Behind Act that are in conflict with Title IX, Section 9527 of the federal Code; are duplicative of the Standards of Quality, Standards of Learning, and Standards of Accreditation; or are lacking in effectiveness. The Board is directed to examine the fiscal impact and other implications of such waivers and must convey its findings to the House Committees on Education and Appropriations and the Senate Committees on Education and Health and Finance.

Interscholastic athletic ineligibility.

Provides that, upon disclosure, a public school student athlete who uses anabolic steroids during the training period immediately preceding or during the sport season of the school or college athletic team on which he is a member will be ineligible to participate in interscholastic athletic competition for two years, unless the steroid was prescribed by a licensed physician for a medical condition.

Student codes of conduct. Directs the Board of Education to develop guidelines for school boards in establishing student codes of conduct designed to prohibit any apparel or style of dress that may promote illegal gang activity.

Elections

Failed

Voter registration; political party affiliation. 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.

Required number of voting machines and counters. Increases the number of machines required to one per 500, rather than 750, registered voters and number of counters required to one per 300, rather than 425, registered voters.

Absentee voting. Provides that qualified voters may vote absentee for any reason and eliminates the present statutory list of specific reasons entitling a voter to cast an absentee ballot.

Health

Passed

Prescription Monitoring Program. Expands the Prescription Monitoring Program to include reporting by out-of-state dispensers (nonresident pharmacies) and to cover the entire Commonwealth. To assist in verifying the validity of a prescription, the bill extends the authority to query the system to prescribers licensed in other states and to pharmacists.

Lay midwives. Provides for the licensing by the Board of Medicine of those persons who have obtained the Certified Professional Midwife credential to practice midwifery pursuant to regulations adopted by the Board of Medicine. Licensed midwives must disclose to clients certain background information, including their training and experience, written protocol for medical emergencies, malpractice or liability insurance coverage, and procedures to file complaints with the Board of Medicine. The bill provides immunity to physicians, nurses, prehospital emergency personnel or health care institutions for acts resulting from the administration of services by any licensed midwife.

Assisted living facilities. Requires administrators of assisted living facilities, except for those providing residential living care only, to be licensed by the Board of Long-Term Care Administrators within the Department of Health Professions. The bill permits the Commissioner of the Department of Social Services to issue an order of summary suspension of a license to operate an assisted living facility in

cases of immediate and substantial threat to the health, safety, and welfare of residents or participants and increases from \$500 to \$10,000 the maximum civil penalty for an assisted living facility out of compliance with licensure requirements.

Failed

Virginia Indoor Clean Air Act. Moves the law restricting smoking in buildings and other enclosed areas from the title relating to local government (15.2) to the title relating to health (32.1) and prohibits smoking indoors in most buildings or enclosed areas frequented by the public. Various exceptions for private homes, some hotel rooms, some restaurant areas, etc. are provided.

Notification to parents of certain health services to minors. Requires any state or local government agency employee who provides services to a minor, relating to sexually transmitted diseases, the provision of emergency contraception, pregnancy, illegal drug use, and the contemplation of suicide to attempt notification, within two business days of delivery of such services, to a custodial parent, legal guardian or other person standing in loco parentis of any service and any reason, condition or diagnosis requiring such service.

Higher Education

Passed

Restructured Higher Education Financial and Administrative Operations Act. Sets forth enabling legislation for the re-

structuring of public institutions of higher education that will extend, upon the satisfaction of various conditions, autonomy while providing oversight mechanisms and establishing certain expectations.

Textbook sales and bookstores. Prohibits employees at Virginia public institutions of higher education from demanding or receiving any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, as an inducement for requiring students to purchase a specific textbook required for coursework or instruction. An exception allows the employee to receive (i) sample copies, instructor's copies, or instructional material, not to be sold; and (ii) royalties or other compensation from sales of textbooks that include such instructor's own writing or work.

Insurance

Passed

Group accident and sickness insurance coverage. Allows coverage under a group accident and sickness insurance policy to be extended to insure any class of persons as may mutually be agreed upon by the insurer and the group policyholder.

Failed

Homeowners insurance. Prohibits an insurer or agent from refusing to renew a homeowner's insurance policy after the homeowner is insured with such in-

surer for seven years or longer, solely because of a claim resulting primarily from other than natural causes, unless the claim is the result of a substantial increase, subsequent to the date the policy was issued or renewed, in the risk of loss that the insurer assumed under the policy.

Homeowners insurance. Authorizes the issuer of a homeowner's policy, with the insured's written consent, to exclude from coverage any portion of the risk that may reasonably be classified by the insurer as an inherently hazardous object or condition of the property.

Labor and Employment

Passed

Unemployment compensation; minimum earnings; maximum weekly benefit. Increases from \$2,500 to \$2,700 the wages an employee must have earned in the two highest earnings quarters of his base period (the first four of the five calendar quarters preceding application for benefits) in order to be eligible for unemployment compensation benefits, and increases the maximum weekly benefit from \$326 to \$330.

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.

Employee's day of rest. Repeals the statutory provisions governing the employee day of rest requirements.

Failed

Workers' compensation. Limits the benefits which aliens not eligible for lawful employment may receive under the Workers' Compensation Act to medical benefits.

Local Government

Passed

Cash proffers. Provides that no locality shall require payment of a cash proffer prior to issuance of a building permit; however, a landowner may voluntarily agree to an earlier payment. Also, no locality shall either request or accept a cash proffer the amount of which is

Abortion/Contraception

Most bills having to do with abortion or contraception failed. Among the more significant:

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 effective July 1, 2005.

Contraception not to constitute abortion. Provides that contraception is not subject to or governed by the abortion law set forth in Title 18.2. "Contraception" is defined, for all purposes, as the use of any process, device, or method to prevent pregnancy, including steroidal, chemical, physical or barrier, natural or permanent methods for preventing the union of an ovum with the spermatozoon or the subsequent implantation of the fertilized ovum in the uterus.

Anesthesia for fetal pain. Observes that fetuses over the gestational age of 20 weeks feel pain and provides that failure, subject to exceptions, of a physician to administer anesthesia to such a fetus prior to an abortion is a Class 1 misdemeanor.

Sale or purchase of post-abortion fetal tissue. Provides that any person who sells or buys fetal tissue resulting from an induced abortion is guilty of a Class 1 misdemeanor.

scheduled to increase annually, from the time of proffer until tender of payment, by a percentage greater than the annual rate of inflation.

Proffer cash payments and expenditures by localities. Any locality accepting a cash payment voluntarily proffered on or after July 1, 2005, shall within seven years of receiving full payment, begin construction or other improvements for which the cash payment was proffered. Failure to do so, or to make authorized alternative improvements, shall result in the cash proffers being forfeited to the Commonwealth Transportation Board.

Medical Malpractice

Passed

Medical malpractice. Requires an expert witness to certify that the health care practitioner deviated from the standard of care before service of process is made. The bill also provides that an admission of sympathy or general sense of benevolence to a patient or a patient's relative is not admissible as evidence of an admission of liability or as evidence of an admission against interest; provides that the impressions, observations, evaluations, and histories obtained or formulated during the course of the practitioner's treatment may be disclosed; and revises the definition of malpractice to limit it to a tort action or breach of contract for personal injuries or wrongful death. Medical malpractice liability insurers are required to submit annual reports to the SCC stating information regarding claims made against the health care practitioner.

Birth-Related Neurological Injury Compensation Program. Establishes that the Birth-Related Neurological Injury Compensation Program's response to a claimant's petition is not due until 10 days after the three-physician panel's report is filed with the Workers' Compensation Commission. Upon the filing of the program's response, the commission shall set the hearing date, which shall be no sooner than 15 and no later than 90 days after the filing of the program's response.

Failed

Noneconomic damages. Several bills limited noneconomic damages in all actions to \$250,000 or \$350,000.

Medical malpractice; limit on attorney fees. Provides that for medical malpractice actions accruing on or after July 1, 2003, attorney fees shall be limited as follows: 33 and one-third percent of the first \$300,000 of the sum recovered; 25 percent of the next \$300,000; 20 percent of the next \$300,000; 15 percent of the next \$300,000; 10 percent of damages of at least \$2.5 million but less than \$5 million; or 5 percent of damages of \$5 million or more.

Natural Resources

Passed

Capitalizing the Water Quality Improvement Fund. Deposits \$50 million from the state general fund into the Water Quality Improvement Fund on July 1, 2005. These moneys are to be used solely to finance the costs of design and installation of biological nutrient removal facilities or other nutrient removal technology at publicly owned sewage systems.

Nutrient trading. Establishes a nutrient exchange or trading program that would allow point source dischargers to achieve and maintain compliance with the load cap allocations for nitrogen and phosphorous delivered to the Chesapeake Bay and its tidal tributaries.

Failed

Clean Stream Fee. Referred to as the "flush tax," the bill requires localities to assess residences connected to a municipal sewer system, septic system, or other wastewater treatment system \$52 per year, and industrial facilities connected to a municipal sewer system \$1,200 per year. The money collected is deposited into the Water Quality Improvement Fund and is to be disbursed for the design and installation of state-of-the-art nutrient removal technology and for agricultural best management practices.

Reduction of smokestack emissions. Establishes maximum limits for sulfur dioxide and nitrogen oxide emissions that are allowed to be released into the atmosphere from facilities with coal-fired electric generating units that produce at least 25 megawatts of electricity. These limits go into effect on May 1, 2011.

Taxation

Passed

Sales tax on food. Provides that the retail sales and use tax on food purchased for human consumption shall be imposed at a

rate of 2.5 percent on and after July 1, 2005 (1.5 percent state and 1 percent local).

Failed

Car tax relief. Removes the cap on the overall amount of car tax relief and gradually increases the amount of car tax relief to 100 percent of the reimbursable amount for qualifying vehicles over a six-year period.

Communications tax reform. Completely revises the taxation of communications services by applying a statewide communications sales and use tax to retail communication and video services on a competitively neutral basis.

Estate tax. Conforms the amount of Virginia estate tax due from an estate to the maximum amount of the federal estate tax credit for state estate taxes, as permitted under federal estate tax law. Because under current federal law there is no state estate tax credit, the bill eliminates the current Virginia estate tax.

Transportation

Failed

Motor vehicle safety belts. Makes safety belt violations primary offenses. This bill also requires that, with a few exceptions, all passengers be belted, not just those in the front seats.

"Photo-red." Expands photo-monitoring systems for traffic signal enforcement to all of Virginia instead of specified localities. Several additional provisions specify where, when, and how these systems are to be used.

"Photo-red." Extends the "sunset" provisions of current law that allows photo-monitoring systems for traffic signal enforcement in localities in Northern Virginia and Tidewater. If the "sunset" is not extended, such programs must end on July 1, 2005.

Youthful drivers. Makes violation of time-of-day and number of passenger limitations committed by holders of provisional licenses primary rather than secondary offenses and bans use of cellular phones and wireless communication devices by holders of a provisional license.

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