

# Session 2009

# Highlights Update

VIRGINIA DIVISION OF LEGISLATIVE SERVICES

## Alcoholic Beverages

### **Passed**

**Alcoholic Beverage Control pilot project.** The measure 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.

**Annual mixed beverage special events.** The measure expands the annual mixed beverage special events license to include licenses to persons operating food and beverage services at any rural event and entertainment park or similar facility owned by a duly organized nonprofit corporation that has been granted an exemption from federal taxation under § 501 (c) (3) and has a minimum of 60,000 square feet of indoor exhibit space, equine and other livestock show areas, and is located in Caroline County.

## Animals

### **Passed**

**Kill permit for wildlife.** The measure authorizes the issuance of a kill permit to shoot any wildlife to an airport operator, if the Director of the Department of Game and Inland Fisheries finds wildlife is creating a hazard. Currently, the operator of an airport can be issued such a permit to kill only deer under this standard.

### **Failed**

**Oversight of animal control officers.** The measure moves oversight and governance of

animal control officers from the State Veterinarian to the Department of Criminal Justice Services.

## Business and Employment

### **Passed**

**Antifreeze bittering agent.** The measure requires that any engine coolant or antifreeze that is manufactured after January 1, 2011, or sold within the Commonwealth that contains more than 10 percent ethylene glycol contain denatonium benzoate as a bittering agent in order to render the coolant or antifreeze unpalatable. Violations are subject to a civil penalty of up to \$100 per violation. The law will become effective January 1, 2011.

**Energy efficiency programs.** The measure authorizes investor-owned electric utilities to recover, through a rate adjustment clause, the costs of designing and operating energy efficiency programs.

**Mortgage Lender and Broker Act.** The measure 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.

**Payday loans.** The measure prohibits any person licensed as a lender under the Payday Loan Act from extending unsecured credit under an open-end loan plan. An emergency

**The 2009 Session Highlights summarizes significant legislation considered during the 2009 General Assembly Session as selected by the staff of the Virginia Division of Legislative Services. This update of the 2009 Session Highlights covers legislative actions through sine die of the Reconvened Session on April 8, 2009.**

clause was added during the Reconvened Session, and the measure became effective upon passage on April 8, 2009.

**Unemployment compensation for military spouses.** The measure provides that good cause for leaving employment exists if an employee voluntarily leaves a job to accompany the employee's spouse, who is on active duty in the military or naval services of the United States, to a new military-related assignment. The measure applies only if the state to which the spouse is transferred has a similar provision, unless the transfer involves members of the Virginia National Guard relocated within Virginia. The measure will become effective if the federal government appropriates funds for this purpose.

### Constitutional Amendments \*

#### **Passed**

**Property tax exemption for disabled veterans.** The amendment directs the General Assembly to exempt from taxation real property that is the principal residence of a veteran, or widow or widower of a veteran, if the veteran has a 100 percent service-connected, permanent, and total disability.

**Property tax exemptions for elderly and disabled.** The amendment allows the General Assembly to authorize localities to either waive, or establish their own, income or financial worth limitations for purposes of granting real property tax relief for persons age 65 or older or persons permanently and totally disabled.

*\* The constitutional amendments will have to be passed again in the 2010 Session and then approved by voters in the November 2010 election to become part of the constitution.*

#### **Failed**

**Governor's term of office.** The amendment 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.

**Homestead property tax exemption.** The amendments would pave the way for localities to provide tax relief for up to 20% of the value of owner-occupied homesteads.

**Restoration of civil rights.** Several proposed amendments would authorize the General

Assembly to provide for the restoration of civil rights for persons convicted of felonies or nonviolent felonies who have completed service of their sentences. The present Constitution provides for restoration of rights by the Governor, and the proposed amendments retain the right of the Governor to restore civil rights.

### Courts and Criminal Justice

#### **Passed**

**Abduction and RICO.** The measure redefines abduction to include subjecting another person to forced labor or services and redefines intimidation to include withholding a person's passport or like documents. The measure also adds four new RICO (Racketeer Influenced and Corrupt Organizations) crimes.

**Concealed handgun permit information.** The measure protects from public disclosure concealed handgun permittee names and descriptive information held by the Department of State Police for purposes of entry into the Virginia Criminal Information Network. The information would still be available to law-enforcement agencies and nonidentifying statistical information would be available to the general public.

**Control of firearms court costs and fees.** The measure authorizes a court to award reasonable attorney fees, expenses, and court costs to any entity that prevails in an action challenging an ordinance, resolution, motion, or an administrative action taken in bad faith, as being in conflict with a locality's authority to control firearms.

**Garnishment.** The measure provides that a parent 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.

**Magistrates and felony arrest warrants.** The measure 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, if one is not available, a law-enforcement agency.

**Post-adoption contact and communication.** The measure authorizes and establishes procedures governing post-adoption contact and communication agreements between the birth parent or parents of a child and the pre-adoptive parent or parents.

**Text messaging while driving.** The measure prohibits operation of a motor vehicle while using any handheld personal communications device to manually enter multiple letters or text or to read a text message.

**Uniform Power of Attorney Act.** The measure establishes in the Code of Virginia the Uniform Act that was adopted by the National Conference of Commissioners on Uniform State Laws. The measure contains a reenactment clause.

### Failed

**Civil immunity for charitable food donations.** The measure provides that any volunteer who donates prepared food to a charitable organization engaged in a food distribution program for needy persons will be exempt from civil liability arising from any injury or death resulting from the nature, age, condition, or packaging of the donated food.

**Gun show sales.** The measure 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.

**State Police Volunteer Chaplaincy Program.** The measure allows the Superintendent of State Police to establish a Voluntary Chaplaincy Program.

**Transporting marijuana.** The measure provides that except as authorized in the Drug Control Act it is a Class 6 felony for any person to transport into the Commonwealth by any means with intent to sell or distribute one ounce or more but less than five pounds of marijuana. Currently, there is no penalty for transportation of less than five pounds of marijuana; however, transportation of five pounds or more is punishable by five to 40 years imprisonment with a 3-year mandatory minimum term plus a \$1,000,000 fine.

### Vetoed

**Concealed handguns in restaurants.** The measure allows a person with a concealed

handgun permit to carry a concealed handgun onto the premises of a restaurant or club and prohibits that person from consuming alcoholic beverages while on the premises. A person who consumes alcohol in violation of the provisions of the bill is guilty of a Class 2 misdemeanor and a person who becomes intoxicated in violation of the provisions of the bill is guilty of a Class 1 misdemeanor.

**Triggerman rule.** The measure redefines the "triggerman rule," which currently provides that only the actual perpetrator of a capital murder is eligible for the death penalty and that accessories and principals in the second degree can be punished only as if guilty of first degree murder. This measure would allow principals in the second degree and accessories before the fact to be charged as principals in the first degree in the cases of murder for hire, murder involving a continuing criminal enterprise, and terrorism.

### Education

#### Passed

**Accreditation of schools.** The measure provides for the delayed implementation of statutes and regulations, upon which the accreditation of schools or school divisions in the Commonwealth is based that were not already in effect on June 30, 2008, until July 1, 2010.

**Family life education.** The measure requires school divisions to distribute a summary to parents and guardians to assist them in understanding the family life education program and to include the statement that:

- Parents and guardians have the right to review all educational materials.
- Parents and guardians have the right to remove the child from all or part of family life education instruction.

**Institutions of higher education.** The measure provides that the 2006 management agreements in place between the Commonwealth and Virginia Tech, the College of William and Mary, and the University of Virginia, and the 2008 management agreement between the state and VCU will expire on June 30, 2012.

**Special education.** The measure provides that any party aggrieved by a special education decision made in a due process hearing may appeal to a circuit court for a period of 180 days.

**Short-term suspension of a student.** The measure provides that a school board may adopt regulations authorizing a principal to impose a short-term suspension, when a student has been charged with an offense involving intentional injury to another student in the same school, pending a decision as to whether to require the offending student to attend an alternative education program. It also provides that a school board may require a student charged with certain juvenile offenses to attend an alternative education program.

### **Failed**

**Autism Tuition Grant.** The measure establishes a tuition assistance grant program for students with autism.

**Diploma requirements.** The measure requires the Board of Education to include a standard credit in economics and personal finance in its requirements for diplomas.

**Tuition for illegal aliens.** The measure establishes that an alien who is unlawfully present in the United States will not be eligible for in-state tuition unless he meets certain criteria.

### Elections

#### **Passed**

**Definition of residence.** A number of measures sought to clarify the definition of "residence" generally or with respect to students in college. As finally passed, the law requires the State Board of Elections to adopt rules to define residence and ensure that the law for determining a person's residence is applied uniformly throughout the Commonwealth.

**Prohibited activities at the polls.** The measure creates an exception to the prohibition on campaign activities within 40 feet of the polling place or within the polling place. It allows voters to wear buttons, stickers, or items of apparel that contain a candidate's name or a political slogan.

**Petition to remove a public official.** The measure provides that the court should 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.

### **Failed**

**Bipartisan redistricting commission.** There were several proposals to establish an independent commission that would produce redistricting proposals for new congressional and General Assembly districts after each decennial census. The commission's proposed plans would then be submitted to the General Assembly which could accept, reject, or amend the plans. The General Assembly would retain final authority over the redistricting process.

**Absentee voting and early voting.** There were a number of proposals to allow "no-excuse" in-person absentee voting. Other measures would have allowed "early voting"--that is, voting during the two to three weeks before the election at the sites provided by the locality.

### Environment and Natural Resources

#### **Passed**

**Biofuels Production Incentive Grant Program.** The measure distinguishes between advanced biofuels that are made from winter cover crops, cellulose, hemicellulose, lignin oil, and algae and those standard biofuels that may be made from agricultural feedstocks such as corn. The program will award a \$0.125 per gallon grant for advanced biofuels and a \$0.10 per gallon grant for standard biofuels and requires the production of one million gallons per year for eligibility.

**Offshore renewable resources.** The measure provides the Marine Resources Commission with the authority to lease subaqueous lands for the purpose of generating electrical energy from wave or tidal action, currents, offshore winds, or thermal or salinity gradients and transmit energy from such sources to shore and requires that any leases require a royalty. All royalties collected will be appropriated to the Virginia Coastal Energy Research Consortium.

### **Failed**

**Greenhouse gas emissions.** The measure requires that the State Air Pollution Control Board adopt regulations requiring the reporting of

greenhouse gas emissions from stationary sources that consume carbon-emitting feedstocks. The regulations would apply only to those sources that emit more than a minute amount of greenhouse gas and that are already required to report emissions of other air pollutants.

## FOIA

### **Passed**

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

**Concealed handgun permit information.** See Courts and Criminal Justice.

## General Laws

### **Passed**

**Common Interest Communities.** The measure limits the authority of the Common Interest Community Board to impose fines against governing boards rather than individual members of the board and adds a requirement for a hearing before imposing a fine.

**Property Owners' Association Act.** The measure provides that actual salary information of the six highest paid employees of the association will be among records that are available to members of an association and that all records, including the salaries of all employees and payments to independent contractors, will be available to members of the board of directors.

**Virginia Indoor Clean Air Act.** The measure 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.

## Health and Mental Health

### **Passed**

**Advance medical directives.** The measure 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.

**Certificate of public need.** The measure revises statutes related to the certificate of public need process including criteria, review process, and process for satisfying conditions on certificates. The measure also establishes a request for application procedure for psychiatric and nursing home beds and services and an expedited review process for capital expenditures over \$15 million.

**Do Not Resuscitate orders.** The measure clarifies that the expression by the patient of the desire to be resuscitated in the event of cardiac or respiratory arrest will constitute revocation of the Durable Do Not Resuscitate Order and that the order may be revoked only by the patient or the person authorized to consent for the patient if he is a minor.

**Mental health law revisions.** The measure amends mental health statutes to address issues resulting from the overhaul of mental health laws during the 2008 Session.

**Notification of family member and commitment.** The measure authorizes disclosure to a friend or family member of a person who is the subject of an emergency custody order, temporary detention order, or involuntary commitment order of information that is relevant to the person's health care.

**Psychiatric treatment of minors.** The measure provides that a person who meets the criteria for involuntary commitment under the Psychiatric Inpatient Treatment of Minors Act may be ordered to mandatory outpatient treatment if less restrictive alternatives to involuntary inpatient treatment are appropriate and available.

**Virginia Indoor Clean Air Act.** See General Laws.

### **Failed**

**Natural health care providers.** The measure allows natural health care providers that are not subject to licensing or certification by a health regulatory board to render care to consumers.

**Naturopathy.** The measure establishes licensure requirements for the practice of naturopathy.

## Insurance

### **Passed**

**Basic health insurance.** The measure allows health insurers to offer and sell group health insurance policies or contracts that do not include state mandated health insurance benefits to

employers with 50 or fewer employees to provide coverage for employees who have been uninsured during the preceding six months. Such a group policy or contract may include any of the state-mandated health benefits as the health insurer and the small employer agree, except that coverage shall be provided for mammograms, pap smears, PSA testing, and colorectal cancer screenings. The law also provides that certain employees who lose their jobs shall be offered the option to continue their health insurance coverage under the COBRA program, with the federal government providing premium assistance for 65% of the cost of the premiums.

### **Failed**

**Mandated health insurance for autism.** The measure requires health insurers, health care subscription plans, and health maintenance organizations to provide coverage for the diagnosis and treatment of autism spectrum disorder in individuals under age 21.

### Local Government

#### **Passed**

**Annexation.** The measure 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 measure 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 measure defines derelict buildings and authorizes local governments to incentivize owners' timely submission of a plan for demolition or renovation, by providing real estate tax abatements and fee refunds. It also simplifies tax lien enforcement and blight provisions and encourages action on derelict buildings by adjusting time frames.

**Extension of certain land use approvals.** The measure 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.

**Transfer of development rights.** The measure makes extensive changes to provisions initially passed in 2006 for the purpose of making the transfer of development rights process more

useable for property owners and localities. The amendments make clear that development rights may be severed but not immediately affixed to a receiving property. Other changes state that any proposed severance or transfer of development rights will only be initiated upon application by the property owners of the sending properties, development rights, or receiving properties, and a locality may not require property owners to sever or transfer development rights as a condition of the development of any property.

### **Failed**

**Possession of weapons in government buildings.** The measure provides that the governing body of any locality may, by ordinance, make it unlawful for any person to possess a dangerous weapon on the property, including buildings and grounds of a government facility.

### Motor Vehicles

#### **Passed**

**Abandoned vehicles.** The measure provides new standards and procedures for acquisition and disposal of abandoned vehicles.

**Compliance with federal REAL ID Act.** The measure amends provisions for obtaining licenses to comply with federal REAL ID Act requirements.

**Relationship between motor vehicle dealers and manufacturers.** The measure revises and clarifies responsibilities of motor vehicle manufacturers toward motor vehicle dealers in the event of termination of a dealer franchise.

**Text messaging while driving.** See Courts.

### **Failed**

**Safety belts.** Makes not using motor vehicle safety belts a "primary offense."

### Social Services

#### **Passed**

**Virginia Child Protection Accountability System.** The measure establishes the Virginia Child Protection Accountability System to collect and make available to the public information on the response to reported cases of child abuse in the Commonwealth.

**Temporary Assistance for Needy Families.** The measure revises the limitation on receipt of one-time diversionary Temporary Assistance for Needy Families or TANF cash assistance from one payment per 60-month period to one payment per 12-month period.

## Taxes and Finance

### **Passed**

**Income tax conformity.** The measure conforms Virginia's income tax with the Internal Revenue Code as it has been done each year for many years.

**Virginia Tax Amnesty Program.** The measure authorizes the State Tax Commissioner to operate a tax amnesty program during the 2009-2010 fiscal year. The program would be open to any individual, corporation, estate, trust, or partnership that is required but has failed to file a return or to pay any tax administered by the Department of Taxation.

**Corporate income tax apportionment for manufacturers.** The measure allows manufacturers to elect an apportionment formula of multiplying their income by the sales factor or using the formula prescribed for other businesses, whether the manufacturers have a sales factor or not. The provisions of the bill would be effective beginning July 1, 2011, and would be phased in with the apportionment formula having a 100 percent sales factor by 2014. For certain manufacturers, the election of a single sales factor is conditioned upon employment levels.

**Minimum tax on noncorporate entities.** The measure clarifies that the minimum tax will be imposed on telecommunications and electric suppliers that are organized as pass-through entities and that certain taxes imposed are to be paid by the pass-through entity.

**Corporate income tax real estate investment trusts.** The measure phases in over a two-year period certain dividend income in calculating the Virginia taxable income of "Captive Real Estate Investment Trusts (REITs)" to be certain their income is taxed in the same manner as any other corporation's shareholders/owners.

**Land preservation tax credit.** The measure reduces from \$100,000 to \$50,000 the amount of the land preservation tax credit that may be claimed for each of taxable years 2009 and 2010.

Any taxpayer affected by the credit reduction would be allowed an additional two taxable years in which to claim the land preservation tax credit.

**Sales and use tax on fabrication of animal meat, grains, vegetables, and foodstuffs.** The measure exempts from sales and use tax the fabrication of animal meat, grains, vegetables, or other foodstuffs when the purchaser supplies the foodstuffs and the foodstuffs are consumed by the purchaser or his family, or when the purchaser is a nonprofit organization or donates the foodstuffs to a nonprofit organization. The measure also exempts from sales and use tax beginning July 1, 2010, and ending June 30, 2020, computer equipment purchased or leased for the processing, storage, retrieval, or communication of data used in a data center that is located in Virginia, results in a new capital investment of at least \$150 million, and results in the creation of at least 50 new jobs associated with the operation or maintenance of the data center.

### **Failed**

**Homebuyer tax credit.** The measure provides an income tax credit equal to \$2,500 for single taxpayers and \$5,000 for married taxpayers filing jointly for taxable years beginning on or after January 1, 2009, but before January 1, 2011, who purchase a principal residence during that period.

**Renewable energy property tax credit.** The measure provides a tax credit for individuals and corporations for renewable energy property placed in service for taxable years beginning on and after January 1, 2009.

**Grants to purchasers of new homes.** The measure authorizes the issuance of \$50 million in bonds to fund grants to individuals who purchase a principal residence in the Commonwealth that was first issued a certificate of occupancy on or after January 1, 2007, but before July 1, 2009.

## Technology

### **Passed**

**Patent and copyright policies of the Commonwealth.** The measure requires the Secretary of Administration, in consultation with the Secretary of Technology and subject to the approval of the Governor, to establish policies by December 1, 2009, regarding the use of patents and copyrights owned by the Commonwealth.

**Promotion of science and technology-based research, development, and commercialization in Virginia.** The measure makes several changes to the Code of Virginia to encourage research, development, and commercialization of advancements in science and technology in the Commonwealth.

Transportation

**Failed**

**Transportation funding.** The measure dedicates certain future general fund revenues to transportation in the Hampton Roads, Richmond, Staunton, Northern Virginia, and Salem highway construction districts.

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