

Session 2010 Highlights

VIRGINIA DIVISION OF LEGISLATIVE SERVICES

ABC

Passed

License exemption for assisted living facilities. The measure allows any licensed assisted living facility to provide alcoholic beverages to residents in dining areas or private rooms. Under current law, no alcoholic beverages are allowed to be kept on the premises where food or refreshments of any kind are furnished for compensation.

Spirits and wine tasting events at government stores. The measure authorizes distilled spirits and farm winery wine tasting events to be conducted at government stores under certain circumstances.

Failed

Privatization of ABC stores. The measure would provide for the auction of "package store" licenses to authorize the retail sale of alcoholic beverages for off-premises consumption. The measure would require the ABC Board to sell or transfer all interest in real property utilized in the wholesale and retail sale of alcoholic beverages.

Animals

Passed

Rabies. The measure revises existing rabies laws and clarifies the responsibilities of the Department of Health, localities, and other entities in preventing and controlling rabies. All dogs and cats over the age of four months must be vaccinated. A rabies certificate will be given to the owners of animals vaccinated and veterinarians will keep a copy of certificates in their files.

Failed

Animal welfare. The measure would prohibit city and county pounds from prohibiting the adoption of a dog or euthanizing a dog based solely on the dog's breed.

Business and Employment

Passed

E-Verify Program. The measure requires Virginia agencies to enroll in the E-Verify Program by December 1, 2012, and to use the program for each newly hired employee who is to perform work within the Commonwealth.

Motor vehicle title loans. The measure establishes requirements for motor vehicle title loans, which are nonpurchase money term loans secured by interest in a motor vehicle. Under the measure, interest cannot exceed 22 percent per month of the outstanding balance of the loan that does not exceed \$700; 18 percent per month on the portion between \$700 and \$1,400; and 15 percent per month on the portion that exceeds \$1,400. Loans may not be for more than 50 percent of the motor vehicle's value. Principal and interest are required to be repaid in equal monthly payments over the term of the loan, which will be between 120 days and one year.

Prepaid electric utility service. The measure authorizes electric cooperatives to install and operate a prepaid metering equipment and system upon a customer's request. The metering system will terminate the customer's electric service immediately and automatically when the customer has incurred charges for electric service equal to the prepaid amount.

Prepaid wireless E-911 charges. The measure establishes the rate and procedures for the collection and remittance of prepaid wireless E-911 charges by dealers of prepaid wireless service in Virginia. There will be a charge of \$0.50 per retail purchase of prepaid wireless services that allow access to the 911 system,

The *2010 Session Highlights* summarizes significant legislation considered by the 2010 General Assembly as selected by the staff of the Virginia Division of Legislative Services. The brief overview of the General Assembly Session covers legislative actions through sine die on Sunday, March 14, 2010.

and the dealer is liable for the payment of the charges. These provisions will apply to retail transactions occurring on or after January 1, 2011.

State credit unions. The measure establishes a procedure by which a state credit union may convert to a state mutual savings institution. Conversion requires approval of two-thirds of the eligible and voting members of the credit union.

Failed

Human tracking devices. The measure would provide that it is unlawful for an insurer and employer to require employees, as a condition of employment, to have an identification/tracking device implanted or applied on their body in order to track them.

Constitutional Amendments

Passed

Having passed in the 2009 and 2010 Sessions as required by the Virginia Constitution, the three following constitutional amendments will likely appear on the ballot to be approved by the voters in the November 2010 election.

Property tax exemption for certain veterans. The amendment directs the General Assembly to exempt from taxation the real property that is the principal residence of certain veterans or, at their death, their eligible widowed spouse. The veteran must have had a 100 percent service-connected, permanent, and total disability determination by the U.S. Department of Veterans Affairs.

Property tax exemption for seniors and disabled citizens. The amendment allows the General Assembly to authorize localities to establish their own income or financial worth limitations for purposes of granting property tax relief for homeowners not less than 65 years of age or permanently and totally disabled. The Constitution presently requires that homeowners eligible for property tax relief show that an extraordinary tax burden exists in relation to their income or financial worth.

Revenue Stabilization Fund. The amendment increases the permissible size of the Revenue Stabilization Fund by 50 percent of the Commonwealth's average annual tax revenues derived from income and sales taxes for the preceding three fiscal years.

Courts and Civil Law

Passed

Child and spousal support. The measure 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. The court may award costs or fees for the evaluation and the services of the expert at any time during the proceedings.

Extension of protective orders. The measure allows that a petitioner who has obtained a protective order may obtain an extension of the order for a period of no more than one year if the respondent continues to pose a threat to the health or safety of the petitioner and the petitioner's family and household members. There is no limit on the number of extensions that may be requested.

Juror photo identification. The measure provides that a potential juror will verify his identity by submitting to the clerk any of the following forms of identification: Commonwealth of Virginia voter registration card; social security card; valid Virginia driver's license or any other valid identification card issued by a government agency; or any valid employee identification card containing a photograph of the juror. If the juror is unable to present one of these forms of identification, he will sign a statement affirming, under penalty of perjury, that he is the named juror.

State Corporation Commission filings. The measure would declare that a person submitting a document that is filed with the clerk of the State Corporation Commission is responsible for ensuring that the information does not contain any personal identifiable information.

Failed

Domestic relations. The measure would provide that in actions filed for spousal support, custody, or visitation or for divorce or separate maintenance the court may draw an adverse inference against any party who refuses to answer a question regarding conduct constituting adultery, sodomy, or fornication on the ground that the testimony might be self-incriminating.

Carried Over

Adverse possession. The measure would abolish adverse possession as a cause of action or a defense if arising on or after July 1, 2010.

Criminal Justice

Passed

Capital murder. The measures add law-enforcement officers and other first responders to the Virginia capital murder statute so that the death sentence can be imposed for the murder of these officers:

- Auxiliary police officers and auxiliary deputy sheriffs are added to the definition of a law-enforcement officer.

- Fire marshals, deputies, and assistant fire marshals with law-enforcement powers and emergency medical services personnel are added to the definition so the death sentence can be imposed when a murder is committed for the purpose of interfering with the performance of these officers' official duties.

Consecutive license suspensions for DUI. The measure provides that any suspension of a driving privilege for DUI will run consecutively with any other court-ordered period of suspension for driving while intoxicated or for underage driving with a blood alcohol concentration of 0.02 percent or more.

Controlled substances reporting. The measure provides that a person authorized to prescribe, dispense, or administer controlled substances who suspects that another person has been in any way deceptive in an attempt to obtain a controlled substance or prescription may report the activity to a local law-enforcement agency for investigation. Any person who, in good faith, furnishes information to a law-enforcement officer or entity will not be liable for civil damages in connection with making the report.

DUI arrest without warrant. The measure provides that an arresting officer at a medical facility may release a person accused of DUI from custody by executing a summons. The law provides that an officer may either arrest or summon the person for a Class 1 or 2 misdemeanor. When a summons is not issued for a person accused of DUI, the officer will bring the person before a judicial officer for a bail hearing. The law allows an arrest to be made for misdemeanor offenses of DUI or "drunk boating," whether or not the offense occurred in the officer's presence.

Electronic records disclosure. The measure authorizes the disclosure of the records of providers of electronic communication service or remote computing services if the court orders disclosure for an investigation of a missing child, senior adult, or an incapacitated person. Under current law the court may order disclosure only if the records are relevant and material to an ongoing criminal investigation.

Human infant. The measure provides that for the purposes of homicide, the fact that the umbilical cord has not been cut or that the placenta remains attached shall not be considered in determining whether a human infant has achieved an independent separate existence.

Failed

Decriminalization of possession of marijuana. The measure would decriminalize simple marijuana possession. The law would not make marijuana possession legal but would create a civil penalty of \$500 for simple possession of marijuana, a penalty equal to the current criminal fine for simple marijuana possession.

Discretion of law-enforcement officers. The measure would give a law-enforcement officer discretion to arrest or to issue a summons to a person in his custody for having committed a Class 1 or 2 misdemeanor.

DUI ignition interlock. The measure would provide that a person who is convicted of driving while intoxicated is required to have an ignition interlock on the first offense as a condition of a restricted license.

Triggerman rule. The measure would redefine 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.

Carried Over

Child pornography offense by a minor. The measure would provide that a minor, who upon the facts could be found guilty of a first offense of possession, production, publication, or solicitation of child pornography, may have his case deferred and dismissed by the court. The offense is separate and distinct and would not prohibit any prosecution or proceeding under other provisions.

Education

Passed

College Partnership Laboratory Schools. The measure allows for the establishment of college partnership laboratory schools by any public institution of higher education that operates an approved teacher education program.

Establishment of virtual school programs. The measure provides for the establishment of criteria for approving and monitoring multidivision providers of online courses and virtual school programs.

Public charter schools. The measure requires the public charter school applicant to submit its proposed charter application to the Board of Education for its review, comment, and a determination that it meets certain minimum criteria, prior to the submission of the application to a local school board.

Failed

Instructional spending. The measure would require each local school board to allocate 65 percent of its operating budget to instructional spending.

School calendar. The measure would make local school boards responsible for setting the school calendar and determining the opening of the school year and eliminate the post-Labor Day opening requirement and "good cause" scenarios for which the Board of Education may grant waivers of this requirement.

Uniform grading policy. The measure would require the Board of Education to establish a policy to interpret end-of-course grades in a uniform manner across the Commonwealth in grades 6 - 12, but allow for a weighted grading system for advanced placement, honors, and International Baccalaureate classes.

Elections

Passed

Absentee ballots. The measure requires that ballots be prepared and available for absentee voting no later than 45 days before any election rather than 45 days before the November election and 30 days before other elections. The measure also requires preparation of ballots 45 days in advance of special elections for federal office and allows, if necessary, preparation as soon after that deadline as possible for other special elections.

Political contributions. The measure provides that a contract bidder or offeror, or any person or agent acting on behalf of a contract bidder or offeror, who has submitted a bid or proposal for the award of a public contract, pursuant to the Virginia Public Procurement Act and certain public-private partnership acts, with an expected value of \$5 million or more, is prohibited from making a contribution to the Governor or his campaign committee, inaugural committee, or political action committee. The prohibition applies to the period between the submission of the bid and the award of the contract, and a violation carries a civil penalty of up to two times the amount of the contribution.

Voting equipment. The measure would allow localities to acquire direct recording electronic machines (DREs) from another locality's existing inventory of DREs for the express purpose of providing accessible voting equipment as required by law.

Voting equipment requirements. The measure authorizes the local electoral board to exclude absentee voters from the calculation of registered voters used to determine the number of mechanical and electronic voting or counting devices that must be provided in each precinct. The board must send the State Board a statement of the number of voting systems to be used in each precinct, and the State Board may direct the local board to provide more systems.

Failed

Absentee voting. The measure would provide that qualified voters may vote absentee in person without providing an excuse or reason for not being able to vote in person on election day. The measure would retain the present statutory list of specific reasons entitling a voter to cast an absentee ballot for those persons who vote absentee by mail.

Bipartisan Redistricting Commission. The measure would establish a seven-member temporary commission to prepare redistricting plans in 2011 and each tenth year thereafter for the House of Delegates, Senate of Virginia, and congressional districts.

Early voting. The measure would provide that any registered voter qualified to vote in the election may vote in person from 19 to three days before the election at specified times and at the sites provided in the locality.

Extension of polling hours in emergency situations. The measure would provide for a court-ordered extension of polling hours in emergency situations and situations that interfere with the ability of voters to travel to the polls.

State Board of Elections. The measure would increase the size of the State Board from three to five members and provide for a new position of Director of Elections to be hired by the State Board and subject to confirmation by the General Assembly.

Voting hours. The measure would extend the hours that polls close on election day from 7:00 p.m. to 8:00 p.m.

Environment and Natural Resources

Passed

Coalbed methane gas. The measure provides that a conveyance, reservation, or exception of coal does not include coalbed methane gas. Certain exemptions to the presumption are included. The measure contains an emergency clause.

Menhaden harvest cap. The measure continues the annual menhaden harvest quota of 109,020 metric tons for the Virginia portion of the Chesapeake Bay until January 1, 2014.

Stormwater management regulations. The measure delays the regulation that establishes local program criteria and delegation procedures and the water quality and water quantity criteria. The measure provides for the regulation to be adopted within 280 days after the establishment of the U.S. Environmental Protection Agency's Chesapeake Bay-wide total maximum daily load, but no later than December 1, 2011. The measure also directs the Virginia Soil and Water Conservation Board to establish an advisory panel to review the regulation and make recommendations on possible revisions to the regulation.

Wastewater discharge permits. The measure requires the owner or operator of a wastewater treatment facility with a discharge greater than 1,000 gallons per day up to 39,999 gallons per day that has not begun the discharge of pollutants prior to January 1, 2011, to demonstrate to the Department of Environmental Quality that he has acquired waste load allocations sufficient to offset his nitrogen and phosphorus discharges.

Failed

Coal surface mining. The measure would prohibit the issuing of a permit for coal surface mining operations unless certain conditions relating to the disposal of waste materials are met.

FOIA**Passed**

Credit card and bank account data. The measure exempts from the mandatory disclosure provisions of the Freedom of Information Act the portions of records that contain account numbers or routing information for any credit card, debit card, or other accounts with a financial institution of any person or public body. There is an emergency clause.

General Assembly**Passed**

General Assembly Conflicts of Interests Act; House and Senate Ethics Advisory Panels. The measure opens ethics inquiries to the public after a preliminary investigation. During the preliminary investigation, the Panel will require that (i) the facts stated in the complaint taken to be true are sufficient to show a violation of the Conflicts of Interests Act, (ii) the complainant appear and testify under oath as to the complaint and the allegations, and (iii) such violation has occurred by a preponderance of the evidence. Once the Panel determines to proceed with an inquiry into the conduct of any legislator, the Panel shall complete its investigations notwithstanding the resignation of the legislator during the course of the Panel's proceedings.

General Laws**Passed**

Fort Monroe Authority Act. The measure establishes the Fort Monroe Authority as a public body corporate and as a political subdivision of the Commonwealth to be governed by a 12-member board of trustees. As a result of decisions made by the federal Base Realignment and Closure Commission, Fort Monroe will cease to be an army base in 2011, and at that time most of the site will revert to the Commonwealth.

Guns**Passed**

Concealed handguns. The measure allows a person with a concealed handgun permit to carry a concealed handgun onto the premises of a restaurant or club but prohibits the person from consuming alcoholic beverages

while on the premises. A violation is a Class 2 misdemeanor.

Concealed handgun permit applications. The measure clarifies that anyone who is denied a concealed handgun permit has the same right to an ore tenus (in court) hearing as a person who has previously held a concealed handgun permit.

Possession of concealed weapons in vehicles. The measure 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 locked in a container or compartment.

Renewal of concealed handgun permits. The measure 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 and Mental Health**Passed**

Advance medical directives. The measure clarifies authority of an advance directive in certain cases; 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 certain cases; adds a provision authorizing a person who has exhibited special care and concern for a patient to make health care decisions on that patient's behalf if the patient is incapable of making an informed decision, except in certain cases; and clarifies the procedure regarding decisions over a patient's protest. The measure also provides that a public guardian may authorize admission of an incapacitated person to a mental health facility in certain situations.

EMS providers and vaccinations. The measure allows emergency medical services providers to administer vaccines to adults and minors pursuant to a protocol approved by the Board of Nursing. The measure contains an emergency clause.

Hospice and home health care. The measure amends hospice licensure standards and prohibits new home care organizations from being licensed until July 1, 2012, but allows the Commissioner of Health to issue a request for and accept applications for: (i) the establishment of home care organizations in federally designated Health Professional Shortage Areas or (ii) home care organizations approved for payments for home health or personal care services by the Department of Medical Assistance Services prior to July 1, 2010.

Schedule II drugs. The measure provides that a pharmacist require proof of identity from any person seeking to fill a prescription for a Schedule II drug unless the person is known to the pharmacist. The measure also requires pharmacists to keep records of the name and address of persons taking delivery of Schedule II drugs.

Schedule VI prescriptions. The measure authorizes a health care practitioner to prescribe Schedule VI antibiotics and antiviral agents to a person in close contact with a diagnosed patient of the practitioner when certain conditions are met.

Carried Over

Lyme disease. The measure allows a licensed physician to prescribe, administer, or dispense long-term antibiotic therapy to a patient diagnosed with Lyme disease.

Insurance

Passed

Dental plans. The measure prohibits a contract between a dental plan and a dentist or oral surgeon from establishing the fee or rate that the provider is required to accept for health care services. The provisions also prohibit requiring a dentist or oral surgeon to accept reimbursement paid by the dental plan as payment in full. The measure applies to contracts made or amended on or after July 1, 2010.

Health insurance for telemedicine services. The measure requires health insurers, health care subscription plans, and health maintenance organizations (HMOs) to provide coverage for the cost of health care services provided through telemedicine services. "Telemedicine services" means the use of interactive audio, video, or other electronic media for the purpose of diagnosis and treatment.

Individual health insurance coverage. The measure provides that a Virginia resident will not be required to obtain or maintain a policy of individual insurance coverage. The law states that no provision of Title 38.2 makes a person liable for any penalty, assessment, fee, or fine as a result of his failure to obtain health insurance coverage. The measure does not apply to individuals voluntarily accepting coverage under a state-administered Medicare or Medicaid program.

Failed

Health insurance coverage for autism. The measure would require health insurers, health care subscription plans, and HMOs to provide coverage for the diagnosis and treatment of autism spectrum disorder in children under 10 years of age.

Local Government

Passed

Assisted living facilities. The measure 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.

Cash proffers. The measure delays collection or acceptance of a cash proffer by a locality until the residential property has been issued a certificate of occupancy.

Noise ordinance penalties. The measure 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.

Urban development areas. The measure sets certain densities in urban development areas according to the population of the locality. The law requires that, to the extent possible, certain federal funding and state water and sewer facility and public infrastructure funding be directed to urban development areas or other designated growth areas.

Motor Vehicles

Passed

Motor vehicle title loans. See Business and Employment.

"Move over" law. The measure requires drivers to move to the left on a four-lane highway when approaching vehicles displaying flashing blue or red lights and certain vehicles displaying amber lights. The offense is punishable as a traffic infraction, instead of a Class 1 misdemeanor. A Class 1 misdemeanor will be charged for a subsequent violation.

Special license plates. The measure authorizes the issuance of special license plates (i) to supporters of the Virginia Kids Eat Free program, (ii) to supporters of the Professor Garfield Foundation, (iii) bearing the legend: TRUST WOMEN/RESPECT CHOICE, (iv) bearing the legend: BUY LOCAL, (v) to supporters of the Virginia Recycling Association, and (vi) to supporters of the Washington Capitals hockey team.

Speed limits on highways. The measure increases the general highway speed limit on highways presently 65 mph to 70 mph.

Social Services

Passed

Nonpayment of child support. The measure provides that a person convicted of DUI or any offense for which a restricted license may be issued may travel to and from appointments in a court-ordered intensive case monitoring program for child support. The measure also provides that the Department of Motor Vehicles will not renew a driver's license or terminate a license suspension

imposed for nonpayment of child support until it receives from the Department of Social Services certification of continued successful participation or completion of an intensive case monitoring program for child support. The measure also provides for the option of home/electronic incarceration of a person convicted of nonsupport.

Shaken baby syndrome. The measure requires the Department of Social Services to make information about shaken baby syndrome available to foster and adoptive parents, and staff of child day programs and children's residential facilities and that every child welfare program licensed by the Department be informed about the available information.

Taxes and Finance

Passed

Financial and management review of all state agencies. The measure is the Governor's initiative to implement an operational and programmatic performance review of state agencies.

Green jobs tax credit. The measure allows a \$500 income tax credit for the creation of each "green" job with a salary of at least \$50,000 for taxable years beginning on and after January 1, 2010.

Income tax deduction. The measure grants an income tax deduction for any income taxed as a long-term capital gain for federal income tax purposes or any income taxed as investment services partnership interest income, on or after January 1, 2011, that is related to a qualified investment in a technology and science start-up business having a principal office or facility in the Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to the investment.

Major business facility job tax credit. The measure amends the Major Business Facility Job Tax Credit by reducing the number of new jobs required to get the credit from 100 to 50.

Small Business Jobs Grant Fund. The measure creates the Small Business Jobs Grant Fund to provide grants to small businesses that create at least five new full-time positions within a 12-month period paying at least the prevailing average annual wage in the locality in which the business is located. Grants will range between \$500 and \$2,000 per new full-time position based on the education, training, and experience required. In awarding grants, priority must be given to small businesses creating new full-time positions in areas with an annual average unemployment rate of more than 125% of the statewide average unemployment rate.

Virginia Retirement System. The measure modifies government retirement benefits for new employees covered by VRS beginning July 1, 2010.

Technology

Passed

Information Technology governance in the Commonwealth. The measure eliminates the Information Technology Investment Board (ITIB) and replaces it with the Information Technology Advisory Council (ITAC) to serve as an advisory council under the Governor. The measure also grants the Governor the power to appoint the Chief Information Officer, who shall serve as the head of the Virginia Information Technologies Agency and report to the Secretary of Technology. The measure contains additional substantive changes to information technology governance in the Commonwealth and contains an emergency clause.

Notification of breach of medical information. The measure requires public entities to notify residents of the Commonwealth if their unredacted or unencrypted medical information or insurance information is the subject of a database breach. The measure has a delayed effective date of January 1, 2011.

Failed

Electronic tracking devices in motor vehicles. The measure would provide that any person who installs or places an electronic tracking device in or on a motor vehicle without the consent of the owner or lessee is guilty of a Class 4 misdemeanor. The measure notes certain exceptions.

Transportation

Passed

Distribution of handbills. The measure gives all localities the power, currently reserved to only named localities, to regulate and prohibit distribution of handbills, solicitation of contributions, and the sale of merchandise on highways, roadways, and medians under state authority.

Hampton HOV lanes. The measure allows an active duty military member in uniform to use HOV lanes, regardless of the number of passengers, when traveling to and from a military facility on Interstate Route 264 and Interstate Route 64 in the Hampton Roads Planning District.

Regulation of signs in highway rights-of-way. The measure allows county employees and volunteers who are acting as agents of the Commonwealth Transportation Commissioner to remove and confiscate signs from the public right-of-way. If a sign is confiscated, the sign owner has the right to reclaim the sign within five business days. Signs installed on private property without the use of equipment do not require Miss Utility notification before installing the sign.

Toll collection. The measure provides that the operator of a toll facility, or the locality where a toll facility is located, may install and operate a video-monitoring system and an automatic vehicle identification system to enforce the collection of tolls.

Failed

Traffic lights and motorcycles. The measure would allow in certain situations motorcycle, moped, and bicycle riders, if displaying a steady red signal, to proceed through an intersection controlled by traffic lights.

Carried Over

Tolls on Hampton bridges. The measure would provide for tolls at the Monitor Merrimac Memorial Bridge-Tunnel and the Hampton Roads Bridge-Tunnel.

For multiple copies of the
2010 Session Highlights
or other
Division of Legislative Services
publications, please contact the
House or the Senate Clerk's Office.



DIVISION OF LEGISLATIVE SERVICES

E. M. Miller, Jr., Director

R.J. Austin, Manager, Special Projects

Lynda Waddill and Mindy Tanner, Editors

© 2010 Division of Legislative Services
Published in Richmond, Virginia
by the Division of Legislative Services,
an agency of the General Assembly of Virginia.

The 2010 Session Highlights is available online at-

<http://dls.virginia.gov/pubs/highlights/2010/>

Division of Legislative Services
910 Capitol Street, GAB, 2nd Floor
Richmond, Virginia 23219

