

Virginia Legislative Record

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Virginia Division of Legislative Services



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Virginia Code Commission

October 3, 2011

Senator Edwards, chair, welcomed members to the meeting held in Richmond, Virginia.

Virginia Rules of Evidence

Kent Sinclair, University of Virginia

Kent Sinclair, a law professor at the University of Virginia, presented proposed rules of evidence as approved by the Supreme Court of Virginia on September 12, 2011. Professor Sinclair explained the importance of evidence laws and related how frequently immediate rulings must be made relating to evidence issues. Massachusetts and Virginia are the only two states that have not codified rules of evidence, although a number of evidence-related provisions are scattered throughout Virginia's statutory code. Professor Sinclair highlighted the efforts to codify the rules of evidence, which began in 1993 and were led by the Boyd-Graves conference.

The Commission discussed the mechanics of turning the rules into law. Subsection E of § 8.01-3 of the *Code of Virginia* requires the rules of evidence prepared by the Supreme Court to be submitted to the Virginia Code Commission for approval. Section 30-153 outlines the Code Commission's responsibility related to drafting rules of evidence for introduction into the General Assembly, and specifies that the rules are codified upon enactment by the General Assembly.

Senator Edwards stated that legislation to put the rules in place would need to be approved by the General Assembly in an up or down vote. The proposed

legislation would repeal the Commission's oversight of the rules of evidence and provide that further amendments to evidence rules would be adopted by the Supreme Court of Virginia in the same manner as other court rules. To change any of the Supreme Court's later amendments, the General Assembly would need to act through legislation. Professor Sinclair explained that very few states have enacted rules of evidence into their statutory codes and that the majority of the states promulgate rules through the rules of court.

A member suggested that the draft legislation adopting the new rules include a savings enactment to address situations where there is a discrepancy between the statutory code and the rules of evidence. He mentioned § 8.01-581.20 as an example.

The Commission also discussed whether the rules apply to the State Corporation Commission. Professor Sinclair noted that § 12.1-30 provides that the State Corporation Commission "shall observe and administer the common and statute law rules of evidence as observed and administered by the courts of the Commonwealth."

The Commission's discussion stressed the importance of providing broad public notice and dissemination of the rules. Professor Sinclair stated that bar groups were notified and comments were solicited during the development of the rules and that no one has expressed opposition to their adoption. In addition, the Chief Justice has invited representatives of law groups, the State Corporation Commission, and the Attorney General's office to discuss the rules later this month.

Mr. Miller stated that the Code Commission should notify the Virginia State Bar, the Virginia Bar Association, State Corporation Commission, and other

The Virginia Code Commission heard information regarding Rules of Evidence.

appropriate groups to make sure they are aware that the Code Commission will be taking action on the rules and to provide an opportunity for comment.

The Code Commission voted to broadly disseminate the rules of evidence and the draft legislation and place the adoption action on the next Code Commission agenda. In addition, the Commission will post the rules of evidence, draft legislation, and provide notice of the meeting at which the Commission will take action on the matter and point of contact on the Commission's website. Staff will email the notice and information to an interested parties list to include the Virginia State Bar, Virginia Bar Association, Virginia Association of Defense Attorneys, Virginia Trial Lawyers Association, Commonwealth's Attorney Advisory Council, Local Government Attorneys of Virginia, State Corporation Commission, Attorney General's Office, Boyd-Graves Conference, and the Virginia Association of Criminal Defense Lawyers.

To give a sufficient amount of time for the information to circulate through the various groups and for comments to be submitted, the Commission rescheduled its November meeting to Monday, December 5, 2011.

Note: At the December 5, 2011, Code Commission meeting held in Richmond, the Virginia Code Commission approved proposed Rules of Evidence legislation for introduction in the 2012 Session.

Virginia DeCoded: The Virginia State Code for Humans

Waldo Jaquith, The Miller Center, University of Virginia

Web developer Waldo Jaquith spoke to the Code Commission about his project to make the online Virginia statutory code more user-friendly. His goal is to provide the information in a more attractive and accessible format with links to statutory definitions, court decisions, attorney general opinions, and helpful legal guides. Mr. Jaquith has applied the same treatment to the *Code of Virginia* as he uses in his Richmond Sunlight website, which is a resource for tracking Virginia legislation. He emphasized that his target market for this free database is the general public, not lawyers.

Mr. Jaquith was awarded a \$165,000 Knight Foundation grant to take his project nationwide. He hopes that the model he has developed for Virginia will set a standard to be used in all 50 states.

Mr. Jaquith explained some of the difficulties that he encountered with the *Code of Virginia* on the General Assembly's website. Recommendations from Mr. Jaquith include (i) placing a link to the machine-readable file (SGML) in an obvious location to make it easier to find and (ii) stating any licensing terms on the website. Mr. Jaquith stressed his desire to help improve Virginia's online *Code of Virginia* and offered to give his database to the Commonwealth if it wants to use all or parts of it.

The Commission thanked Mr. Jaquith for his time and suggested that staff from the Division of Legislative Automated Systems, Division of Legislative Services, and LexisNexis meet with Mr. Jaquith to discuss the matter in more detail.

Health Care Decisions Act

David Cotter, Division of Legislative Services

Mr. Cotter reported that some concerns were voiced about the Commission's decision at its last meeting to move the Health Care Decisions Act (HCDA) from Title 54.1 to Title 32.1. Some commenters argue that placement in Title 32.1 is no better than Title 54.1, and the question arose as to what would be gained by moving the HCDA as opposed to leaving it in its current location. Also, some costs are associated with moving the HCDA because a number of forms would need to be updated to reflect the new numbers and reprinted.

The chair recognized Nathan Kottcamp whose expertise is in healthcare law. Mr. Kottcamp's position is that moving the Health Care Decisions Act will be a logistical nightmare, and he opposes the move. Mr. Kottcamp said that the Virginia Hospital and Healthcare Association and the Advance Directives Task Force also share his position.

The Commission discussed whether to reconsider its vote to move the HCDA. Although some members believe that the move to Title 32.1 is logical, a suggestion was made to monitor the HCDA for now and, if changes are introduced in the legislative

session, consider relocating the HCDA at that time. Mr. Palmore, the Governor's designee to the Virginia Code Commission, stated that the administration prefers to keep the HCDA in its current location.

The Code Commission reconsidered its vote from the last meeting to move the HCDA to Title 32.1 and then voted to table the motion to move it resulting in the HCDA remaining in Title 54.1.

Recodification of Title 64.1 of the *Code of Virginia*

David Cotter, Division of Legislative Services

Mr. Cotter presented Part A (Fiduciaries) of Subtitle III of Title 64.2, which consists of Chapters 11 (Commissioners of Accounts), 12 (Inventories and Accounts), 13 (Fiduciaries Generally), and 14 (Investments). These chapters are derived from existing Chapters 1 through 4 of Title 26.

Mr. Cotter reviewed the changes made by the workgroup. Most changes clarify existing language or are technical in nature and are described in the drafting notes. The Commission discussed the "legal list" of lawful fiduciary investments contained in proposed § 2.2-4519, which is derived from § 26-40. This section pertains to investments made by the Virginia Resources Authority and Virginia Housing Development Authority. The Commission noted that the "legal list" contains references to certain lawful investments that may no longer exist in the same form as they did at the time they were added to this section. Mr. Cotter was asked to add language to the drafting note explaining that the Commission recognizes the obsolete terminology in the legal list and that the Commission determined the issue to be beyond the scope of this recodification.

Upon the Commission's completion of Part A, Mr. Cotter advised that the general provisions chapter, several outstanding issues, and the final report with an executive summary will be presented to the Commission at the December meeting.

Note: At the December 5, 2011, Code Commission meeting held in Richmond, the Virginia Code Commission approved the Title 64.1 recodification for introduction in the 2012 Session.

VIRGINIA CODE COMMISSION

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The Virginia Code
Commission
continued to hear
information
regarding the
recodification of Title
64.1.

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Virginia Freedom of Information Advisory Council

November 14, 2011

The Virginia Freedom of Information Advisory Council heard the results of discussion regarding access to names and salary information for public employees and officials.

The Freedom on Information Advisory Council (the Council) held its third quarterly meeting in Richmond to continue its deliberation on the bills referred to it for further study by the 2011 General Assembly, receive progress reports from its two subcommittees, and hold its annual legislative preview.

Subcommittee Reports

Personnel Records Subcommittee

Ed Jones, chair of the Personnel Records Subcommittee, advised the Council that the Subcommittee had met twice in Richmond, on July 18 and October 4, and once in Fredericksburg, on November 8. As a reminder, the Subcommittee was appointed to study Senate Bill 812 (2011), concerning access to names and salary information for public employees and officials, which was referred to the FOIA Council by the 2011 Session of the General Assembly. The Subcommittee decided not to recommend Senate Bill 812, which would have excluded employee names from being disclosed along with their salary or rate-of-pay. Under current law, such information does not have to be disclosed if the annual salary or rate of pay is \$10,000 or less. The Subcommittee looked at the history of this provision, which was enacted in 1978, as well as how other states handle such information. There is no legislative history discussing why the threshold was implemented, or why \$10,000 was the chosen amount. What legislative history is available indicates that the law passed the Senate without any threshold in place, but the \$10,000 threshold was added by the House, and it was the House version with the threshold that was enacted. Research indicated that Virginia is one of only three states that has any restrictions upon name and salary information of public employees. Additionally, there appears to be a current trend toward posting online such name and salary information, as evidenced in states such as New Mexico. Mr. Jones stated he

supported leaving the current law unchanged for three reasons:

- History - there is no legislative history. Two prior subcommittees studying FOIA in the last two decades left this provision unchanged, and there is no "escalator clause" or other mechanism in the statute to raise the \$10,000 threshold.
- National trends - while recognizing that \$10,000 in 1978 is not the same as \$10,000 today, the more compelling trend is for greater transparency and accountability in government.
- Balancing - the current law strikes a balance between the public's right to know and a public employee's interest in privacy.

After considering options including eliminating the \$10,000 threshold amount, raising the threshold to some higher amount, or leaving the law as it is, the Subcommittee voted 2-1 in favor of leaving the law as it is.

Criminal Investigative Records Subcommittee

Craig Fifer, chair of the Criminal Investigative Records Subcommittee, reported that the Subcommittee had met on July 18, 2011. As a reminder, he noted that the gist of the Subcommittee's work is to see if there is any reason to change the existing exemption for criminal investigative records. In July, the Subcommittee decided not to proceed with Senate Bill 1467 (2011), but to continue to study the issues raised because of the amount of interest in access to criminal investigative files and other law-enforcement records. At its July meeting, the Subcommittee directed staff to meet with the interested parties to see if consensus could be reached about any changes to be made to the existing law. Since then, staff has met with interested stakeholders (representing the Virginia Press Association, the Virginia Coalition for Open Government, the Virginia Association of Chiefs of Police, the Virginia State Police, the Virginia Sheriffs' Association, the Virginia Municipal League, the Virginia Association of Counties, as well as law-enforcement representatives from the Culpeper County Sheriff's Office and Fairfax County Police Department) three times this year: on August 31, October 12, and November 14. The workgroup used a draft prepared by the Virginia Press Association (VPA) as a vehicle for discussion at these meetings. The workgroup has not reached agreement on a legislative proposal at this time, but intends to

continue its work next year. The current plan is for VPA representatives to prepare a position paper regarding issues of concern in the current law, which will be posted on the FOIA Council website and shared with the other interested parties. After the stakeholders share the paper with their constituents to get their reactions, the workgroup discussions will resume at a date to be determined after the 2012 Session of the General Assembly.

Annual Legislative Preview

The purpose of the annual legislative preview is to air FOIA and related access issues before the Council and other interested parties, which issues will or may be the subject of legislation in the upcoming Session of the General Assembly.

Cherry Evans and Betty Wilson,
Virginia Department of Aviation

Ms. Evans and Ms. Wilson indicated concern about access to flight manifests and certain grant information. The Department provides air services to the Governor, other elected officials, and other state agencies; the flight manifests reveal information about the Governor's travel schedule, economic development, prisoner transport, and other sensitive matters. The Department also issues grants to promote and enhance air services. Those seeking grants from the Department, such as local airports, are required to provide relevant records, which often contain details about airport operations and ongoing negotiations with other parties. In regard to both grants and flight manifests, there are existing provisions that exempt the records at issue from disclosure when the records are held by other officials or agencies, but the concern is that the records may not be so protected once the records are shared with the Department (i.e., that the relevant existing exemptions are written so narrowly as to exclude the Department from using them). Ms. Wilson indicated that the Department intends to look into the matter in the coming year, but does not intend to introduce legislation on the matter during the 2012 Session of the General Assembly.

Other Business

The Council voted to cancel the scheduled January meeting and a motion passed for a resolution from the Commission commending Senator Houck for his many years of dedicated and thoughtful service to the FOIA Council and the Commonwealth.



**Virginia Freedom of Information
Advisory Council**

*The Virginia
Freedom of
Information Advisory
Council held its
annual legislative
preview at its
November 14th
meeting.*

VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

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**The 2012 Session of the
Virginia General Assembly
begins on January 11, 2012.**

Virginia Housing Commission

November 16, 2011

The Virginia Housing Commission met in Hampton, as part of the Governor's Housing Conference, to hear updates from work groups.

The Virginia Housing Commission (Commission) met in Hampton, as part of the Governor's Housing Conference, with Delegate Cosgrove, chair, presiding.

Neighborhood Transitions and Residential Land Use Work Group

The Commission heard information from the Neighborhood Transitions and Land Use Work Group on possible legislation for the 2012 Session on the repair of derelict buildings through the use of receivership and landlord-tenant issues. Two pieces of landlord-tenant legislation were endorsed. Legislation regarding the future of tax credits after *Virginia Historic Tax Credit Fund 2001 LP v. Commissioner of Internal Revenue*, 639 F.3d 129 (2011) will be studied next year.

Common Interest Communities Work Group

The Common Interest Communities Work Group reported on proposed legislation related to the Virginia Real Estate Time-Share Act and endorsed the legislation, while noting that proposed legislation regarding bank-owned abandoned condominium foreclosure or the Virginia Property Owners' Association Act would be presented at the December meeting.

Affordability, Real Estate Law, and Mortgages Work Group

The Mortgages Sub-Work Group reported on proposed legislation regarding potential impacts of the Consumer Financial Protection Bureau on mortgage loan originators in Virginia, mortgage loan originators/owner financing (the owner financing bill draft was endorsed while the mortgage loan originator bill draft endorsement was postponed until

December when technical changes would be added to the bill draft), and foreclosure on liens for unpaid assessments, while noting that a bill draft regarding foreclosure procedures had been referred to the Virginia Foreclosure Task Force. The Affordability, Real Estate Law, and Mortgages Work Group reported that no proposed legislation currently existed regarding manufactured home titling or the Fair Housing Law.

Housing and Environmental Standards Work Group

The Housing and Environmental Standards Work Group received an update on Green Buildings Code while noting that no proposed legislation existed regarding sustainable community planning, the Charlottesville Housing Affordability Program, and the Virginia Tobacco Indemnification and Community Revitalization Commission and energy efficient affordable housing.

Municipal Water Issue Sub-Work Group

The Municipal Water Issue Sub-Work Group reported on proposed legislation regarding landlord/tenants and deposits for municipal utility services. A compromise was not yet reached but a draft will be available by the December meeting.

Housing Policy

Susan Dewey, Director, Virginia Housing Development Authority

Ms. Dewey reported that there has been significant progress in addressing housing issues in the past two years, and Virginia is in the forefront of housing policy. Housing policy goals for the future include:

- Finding solutions to homelessness.
- Focusing increased attention on issues cutting across Secretariat boundaries since housing is related to economics, transportation, and many other issues.
- Addressing issues that are subject to outcomes in other policy areas.

A broad range of housing objectives exist including:

- Recognition of the role of the housing industry as a vital economic development engine within the Commonwealth.
- Promotion of sustainable and vibrant communities.
- Ensuring the provision of a range of housing options.
- Prevention and reduction of homelessness.

Ms. Dewey noted that the nature of the work that is being done is very broad and a large group of stakeholders are guiding policy development. The Housing Policy Work Group and an Advisory Committee are guiding the framing of recommendations for each goal, and combined include approximately 80 members.

The Homeless Outcomes Advisory Committee has developed a Homeless Outcomes Action Plan and seeks to reduce homelessness by 15 percent over the next few years.

The Virginia Foreclosure Task Force (Task Force) has been focusing on the legislation that was referred by the General Assembly and the Housing Commission, and will issue a report on those issues shortly. The Task Force also studies foreclosure data and its impact on the Commonwealth.

A Housing Policy Track is being established at the Governor's Housing Conference and will study issues in the housing policy report and providing an in-depth analysis of those issues.

Key issues in housing policy in the coming year are the implementation of the Homeless Action Plan, addressing of foreclosure issues, and initiation of other activities that can be moved forward quickly.

Housing has a significant impact on the economy, and housing policy has focused on ensuring a flow of mortgage credit for the purchase and rental of property. The Foreclosure Task Force has been tracking and reporting on foreclosure trends, which includes financial literacy, and has been working with the Emergency Home Loan Program.

In promoting sustainable communities, the Virginia Department of Housing and Community Development (DHCD) and Virginia Housing Development Authority are working on the initiation of a process to build consensus on voluntary "visitability" and Universal Design standards for housing

programs to assist those with special needs.

To expand housing options, policy has looked to better accommodate those with special needs, including those with physical or mental disabilities, those on a fixed income, etc.

One of the keys to reducing and preventing homelessness is rapid rehousing for those who are recently homeless. There have been new positions established within the Virginia Department of Behavioral Health and Developmental Services and the Department of Medical Assistance Services to coordinate housing and support services.

Factors that may impede progress in the future are the uncertain impact of significant federal fiscal retrenchment on state agency housing activities and priorities and Virginia's overall budget. Continuing to look to resources available to Virginia to coordinate those resources and use them as efficiently and effectively as possible will be very important moving forward.

The floor then opened for comments with Mark Flynn of the Virginia Municipal League commenting that the work being done to address the housing-jobs-transit link and promote sustainable communities is fantastic. Local government planning plays a role in accomplishing these goals, and the tool the General Assembly used was Urban Development Area legislation. The 2012 session may see a repeal of that legislation, and that will also have an affect on achieving these housing policy goals.

T.K. Somanath of the Better Housing Coalition asked about incentives for the promotion of sustainable communities to which Ms. Dewey responded that VHDA administered a federal loan housing tax credit that includes points for sustainability. Bill Shelton from DHCD added that DHCD provides incentives for communities through funding.

The Virginia Housing Commission received a briefing regarding housing policy issues in the Commonwealth.

December 13, 2011

Delegate John Cosgrove, chair, welcomed Virginia Housing Commission members to the meeting held in Richmond, Virginia.

Current Housing Conditions in Virginia

Sonya Waddell, Federal Reserve Bank of Richmond

Ms. Waddell provided the Commission with an update on the state of housing in the Commonwealth. Although the Federal Reserve has an additional two quarters of data since she last updated the Commission in April, the housing situation remains basically the same. The housing market continues to be a drag on the economy, house prices are still falling on a year-over-year basis, and foreclosure inventories remain at record levels. However, the shadow inventory of homes is contracting as the number of homes entering delinquency and foreclosure is reducing, and labor markets in Virginia are beginning to stabilize, as they are across the nation.

Attorney General's Foreclosure Response

Mark Kubiak, Office of the Attorney General

Mr. Kubiak offered a brief update on the multistate mortgage servicer investigation and foreclosure rescue.

The investigation began in October 2010 and is continuing, and settlement negotiations are ongoing. The investigation included many federal and state agencies from 48 states and the District of Columbia. The investigation is examining issues related to servicing standards, including fraudulent foreclosure documentation, loss mitigation, and other wrongful foreclosure practices. Significant progress has been made, and although no settlement has been reached with any servicer to date, there is optimism that a resolution will be reached soon.

Foreclosure rescue cases involve third parties who are not affiliated with consumers, lenders, or servicers, who claim

to provide foreclosure assistance for an upfront fee, which they collect from the consumer without ever providing foreclosure assistance. Protective laws that have been used to combat this practice include the Virginia Consumer Protection Act and the Foreclosure Rescue Law. Four separate enforcement actions have been brought against foreclosure rescue operators and settled.

Proposed Legislation

Repair of Derelict Buildings/
Receivership

This draft legislation uses a process known as receivership, which the Receivership Sub-Work Group believes will be a useful tool for localities to repair residential, derelict structures. The process allows the court to appoint a receiver to repair a structure that has been declared derelict and blighted under the existing spot blight abatement statutes. Once the court has initiated spot blight proceedings, it may, through the court system, suggest a receiver to take possession of the blighted property and make the necessary repairs to restore the building to a livable condition. A judge will approve the receiver and the receiver's rehabilitation plan, and place a lien against the property for the cost of the repairs once they are completed. The ownership rights of the property remain with the owner throughout the process, and at any point he may pay the receiver's lien and retain ownership, or sell the property if so desired. If the owner is unable or unwilling to pay the lien, the property is sold and any proceeds remaining after the lien has been paid are returned to the original owner. Because the receivership process uses the existing spot blight abatement statute to take possession of the property, it does not expand the taking power of localities or allow for zoning changes. Using receivership, the original property owner receives any remaining proceeds from the sale of the property, whereas under a spot blight proceeding, the property would be taken and then sold, thereby decreasing the profits realized by the owner.

The draft legislation was properly moved and seconded, all were in favor, and the draft was endorsed by the Commission.

The Attorney General's office briefed the Virginia Housing Commission on the multistate mortgage servicer investigation and foreclosure rescue.

Rental Receipts

This draft requires landlords to issue receipts for rental payments made using cash or money order at the tenant's request.

The draft legislation was properly moved and seconded with two members voting against the draft. The draft was endorsed by the Commission.

Mortgage Loan Originator; Non-Profit Exemptions, Technical Changes

The draft legislation seeks to ensure Virginia's compliance with the federal SAFE Act in the wake of a recent ruling by the Housing and Urban Development (HUD). According to HUD (which had been tasked with enforcing the SAFE Act before that responsibility was recently given to the Consumer Financial Protection Bureau), the current language in Virginia's statute requiring licensure of those "act[ing] as" mortgage loan originators encompasses non-profit agencies who are subject to an exception to the licensure requirements. Instead, HUD suggests those "engag[ing] in the business of" mortgage loan originators includes only those who act in a commercial context, and excludes "bona fide non-profit organizations." This legislation changes the language in Virginia's statute from "act as" to "engage in the business of" in order to ensure compliance with HUD's ruling and the SAFE Act.

The draft was properly moved and seconded, all were in favor, and the draft received endorsement by the Commission.

Water/Sewer Liens; Localities and Municipal Utility Services

Currently, a locality may place a lien on a landlord's property for the amount of outstanding water and sewer bills owed by a tenant. This proposed legislation amends the process that a locality or water authority must follow before placing a lien on property for the unpaid water and sewer bills of a tenant. The landowner must provide the tenant with written authorization that must be presented to local authorities before setting up an account for water and sewer services in the tenant's name. Also, local authorities must notify the landowner that a lien may be placed against his property if the tenant's water and sewer bills remain outstanding. The owner

must be given a copy of any outstanding bill to allow the owner an opportunity to pay the overdue amounts if he so chooses. Additionally, a security deposit of no less than three months and no more than five months' worth of water and sewer fees must be collected from the tenant by the locality, which will be applied to any outstanding amounts in the event that the tenant fails to pay the bill. The locality must also execute reasonable collection efforts to collect any overdue amounts from the tenant, and provide the owner with 30 days' written notice before the lien may be filed. The bill exempts a tenant with a Section 8 Housing Choice voucher from paying the security deposit, and this will not prevent the locality from enforcing its lien rights.

Senator Whipple moved to endorse the draft legislation with the understanding that there be further exploration into whether existing local programs that evaluate the indigent status of a person may be incorporated into the draft. The motion was properly seconded, and all were in favor.

Foreclosure on Liens for Unpaid Assessments

The first proposal discussed was draft legislation that sought to allow sales of foreclosed condominium units subject to the first deed of trust. A 2003 Supreme Court of Virginia ruling stated that proceeds from a foreclosure sale of a condominium must first satisfy superior liens under the Condominium Act before the Condominium Owners Association may satisfy an assessment lien. Superior liens can include real estate tax liens, liens recorded prior to the assessment lien, and amounts owed on any first mortgages or first deeds of trust recorded prior to the assessment lien. The Virginia Bankers Association (VBA) asserted that the bill draft allows a property owners' association to sell the property in a non-judicial sale without paying off the mortgage lender's prior deed of trust. The VBA opposed the bill on the grounds that the legislation would, in the words of the court, "put the institutional lender holding the first deed of trust at a serious disadvantage with respect to its ability to protect its security interest in the condominium unit." There were no motions on the bill draft.

The Virginia Housing Commission reviewed proposed legislation for the upcoming 2012 Session of the General Assembly.



The Virginia Housing Commission heard discussion on proposed legislation regarding foreclosure on liens for unpaid assessments.

The second proposal was draft legislation to amend the Property Owners' Association Act to allow associations to enter vacant property where a violation exists and take corrective action to ensure the property is maintained properly, charging the owner of the property for the maintenance repairs. This is currently allowed for condominium units by the Condominium Act. The VBA opposed the bill draft on the grounds that other property owners are not as impacted by failure to maintain the property as those in a condominium unit, and suggested limiting the amount that could be charged to the owner for repairs. Stakeholders acknowledged that they are continuing to work on the bill draft to reach a consensus. There were no motions on the bill.

VIRGINIA HOUSING COMMISSION

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"Did You Know?" appears in each issue of the *Virginia Legislative Record*. The article features important topics or interesting facts relevant to the Virginia legislature. For general questions or topic suggestions, please contact the Division at (804)786-3591 or email mtanner@dls.virginia.gov.

Did You Know?

2012 Session Prefiling Calendar

- Joint subcommittees on studies should submit an executive summary including findings and recommendations to DLAS by the first day of the General Assembly's Regular Session.
- All drafts of legislation to be prefiled returned by DLS for requester's review by midnight December 30, 2011.
- All requests for drafts, redrafts, and corrections of legislation creating or continuing a study to DLS by 5:00 p.m. on January 6, 2012.
- All requests for redrafts and corrections for legislation to be prefiled to DLS by 5:00 p.m. on January 6, 2012.
- Covered drafts of legislation to be prefiled available at DLS by noon on January 10, 2012.
- Prefiling for the 2012 Session ends at 10:00 a.m. on January 11, 2012.
- The 2012 General Assembly convenes on January 11, 2012, at noon.

Joint Commission on Technology and Science

December 7, 2011

The Joint Commission on Technology and Science held its final meeting of the 2011 interim in Richmond on December 7, 2011.

Annual Reports

The Honorable Jim Duffey, Secretary of Technology, gave his annual report to the Commission. A copy of his presentation is available on the JCOTS website. During the presentation, the Secretary reported on technology priorities and goals, including increasing reliability of IT infrastructure, encouraging the creation and growth of high potential companies, positioning the Commonwealth as a hub of research and commercialization, and expanding the deployment of electronic medical records.

Chief Information Officer of the Commonwealth, Sam Nixon, gave his annual report to the Commission. A copy of the report is available on the JCOTS website. During his presentation, the CIO highlighted certain updates in IT management in the Commonwealth, explored certain ongoing initiatives being conducted by the Virginia Information Technologies Agency, and briefly addressed certain challenges being addressed by VITA.

The Center for Innovative Technology's president and CEO, Peter Jobse, provided his annual report to the Commission. A copy of the report is available on the JCOTS website. During his presentation, Mr. Jobse updated the Commission on the progress being made through the various CIT programs, such as CIT Entrepreneur, CIT R&D, CIT Connect, and CIT Broadband, as well as other programs and projects.

Advisory Committee Reports

Electronic Privacy Advisory Committee

The chair of the Privacy Advisory Committee reported on the bill draft completed by the Advisory Committee during the 2011 interim. The bill draft stemmed from House Bill 2032 (2011), concerning the

use of electronic tracking devices, which was not reported from the Senate Courts Committee and was returned to JCOTS for further discussion.

During the Advisory Committee's three meetings, the discussion focused on the appropriate standard for the crime in the bill draft. Because the standard of "through intentionally deceptive means" is not a standard used otherwise in the *Code of Virginia*, the Advisory Committee determined to change the standard to "intentionally deceptive means and without consent."

Additional discussion during the interim focused on the exceptions to be added to the bill draft. In particular, a lot of attention was paid to private investigators. In the end, private investigators were given an exemption, with the added requirement that the Department of Criminal Justice Services must produce regulations governing the use of electronic tracking devices by private investigators. Those regulations must be in concert with the currently pending case coming out of the Supreme Court of the United States on the issue of requiring warrants by police officers to use tracking devices in criminal investigations.

A motion passed with one "no" vote to recommend the bill draft to the General Assembly for passage. A copy of the bill draft is available on the JCOTS website.

Transportation and Technology Advisory Committee

The chair of the Transportation and Technology Advisory Committee reported that the Advisory Committee recommended a bill draft that would make texting while driving a primary offense. The crime is currently a secondary offense.

During the course of the Advisory Committee's two meetings, members considered other approaches adopted in other states, such as in Maine, which bans all forms of distractions while driving. However, because the data on Virginia's law seems to be inconclusive as to the effectiveness of the current law, the Advisory Committee determined to move forward with changing the current Virginia ban from a secondary to a primary offense.

A motion was made and seconded to

The Joint Commission on Technology and Science heard an update on technology priorities and goals for the Commonwealth from the Secretary of Technology and Chief Information Officer of the Commonwealth.

The Joint Commission on Technology and Science heard reports from its five advisory committees.

recommend the bill draft for passage by the General Assembly. The motion passed 4 to 3. The bill draft is available on the JCOTS website.

The Advisory Committee also discussed the issue of Remote Emissions Testing over the course of the two meetings conducted during the interim. The Advisory Committee heard presentations from stakeholders in favor of and opposed to the implementation of a remote emissions testing program on a wider scale in Virginia. Ultimately, the Advisory Committee did not come to a final conclusion either in favor of or opposed to the notion and made no recommendations to the full Commission. The chair noted, however, that members of the General Assembly will likely introduce legislation from those on both sides of the debate in the upcoming Session.

UCITA Advisory Committee

The chair of the UCITA Advisory Committee discussed the issue of electronic security credentials and federated identity management as it was studied by the Advisory Committee over the course of the 2011 interim. The issue of proving a person's identity for the purposes of allowing access to confidential databases or to conduct business transactions over the Internet is becoming an extremely important topic, and Virginia is at the forefront of the conversation. Many stakeholders around the Commonwealth, as well as throughout the country and even internationally, are interested in JCOTS's work on the issue. Because the topic is so far-reaching and complex, the Advisory Committee determined that the subject could not be completely studied within the year and recommended that JCOTS conduct further studies on the issues regarding electronic security credentials.

A motion passed unanimously to recommend to the General Assembly for adoption a study resolution that would call on JCOTS to bring together stakeholders in the issue for further discussion and study. A copy of the study resolution is available on the JCOTS website.

Medical Database Breach Advisory Committee

The chair of the Medical Database Breach Advisory Committee, reported on database

breaches involving the issue of confidential medical records in the Commonwealth, and the procedural protections that are currently in place. The Advisory Committee studied House Bill 2315 from the 2011 Session of the General Assembly, which would place a notification requirement on any entity that maintained medical information in the event of a breach of security.

The intent behind the bill was to ensure that no entity that maintains this kind of confidential information would "fall through the cracks" from other database breach regulations at both the state and federal level. Attorneys in Virginia were concerned that the language of the bill would place too high of a burden on them, however, considering that they are already under an obligation through legal ethics rules to notify their clients in the event that any confidential information is breached.

At the close of the one meeting during the interim, it was determined that there is no need for legislation at this time, but that should any legislation be introduced in the future, it should be sent to JCOTS for study.

Energy Advisory Committee

Staff provided a report on the two meetings held during the interim as the Advisory Committee chair was unable to be present. At those meetings, the Advisory Committee received briefings on several energy programs and initiatives that are being developed throughout the Commonwealth. The presentations are all available on the JCOTS website.



JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

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Regulatory Alert

A Convenient Guide to Regulatory Activity in the Commonwealth

The Regulatory Alert is intended to assist General Assembly members as they keep up with the myriad regulations being proposed by agencies in the Commonwealth. The goal of this project is to provide a timely, simple, and accurate summary of the rules that are being proposed by agencies, boards, and commissions. Highlighting regulations when they are published as “proposed regulations” gives General Assembly members notice that the critical public participation phase of the rulemaking process is well underway. It is during the public participation process that the questions of an Assembly member or constituent may be most effectively communicated to the agency and examined by the individuals crafting the regulatory proposal.

The Regulatory Alert is not intended to be a substitute for the comprehensive information on agency rulemaking activity that is currently published biweekly in the *Virginia Register of Regulations* or the notification services offered by the Regulatory Town Hall website maintained by the Department of Planning and Budget. It is hoped that the *Virginia Legislative Record* will assist all members as they monitor the development, modification, and repeal of administrative rules in the Commonwealth. Access the *Virginia Register of Regulations* online at <http://register.dls.virginia.gov> or contact epalen@dls.virginia.gov or the Code Commission staff at (804) 786-3591 for further information.

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

NOTICE OF EFFECTIVE DATE

1VAC20-20. General Administration (amending 1VAC20-20-10; adding 1VAC20-20-30, 1VAC20-20-40, 1VAC20-20-50, 1VAC20-20-60, 1VAC20-20-70, 1VAC20-20-80).

Effective Date: November 1, 2011.

On January 31, 2011, the State Board of Elections adopted this regulation relating to general administration. The final regulation was published in Volume 27, Issue 13 of the February 28, 2011, edition of the Virginia Register of Regulations (27:13 VA.R. 1482-1484 February 28, 2011) with an effective date upon filing a notice of the United States Attorney General's preclearance with the Registrar of Regulations. The State Board of Elections hereby notices the United States Attorney General's approval of this regulation via a letter dated October 24, 2011, from T. Christian Herren, Jr., Chief, Voting Section, to Joshua N. Lief, Esq., Senior Assistant Attorney General, Office of the Attorney General of Virginia. The effective date of this regulation is November 1, 2011. Copies are available online at <http://townhall.virginia.gov/L/ViewXML.cfm?textid=5167>; by telephone toll-free 1-800-552-9745 or local (804) 864-8910; by written request to FOIA

Coordinator, 1100 Bank Street, Richmond, VA 23219; or by email request to foia@sbe.virginia.gov.

For more information, please contact Martha Brissette, Policy Analyst, State Board of Elections, Richmond, VA, telephone (804) 864-8925, or email martha.brissette@sbe.virginia.gov.

NOTICE OF EFFECTIVE DATE

1VAC20-40. Voter Registration (adding 1VAC20-40-70).

Effective Date: November 1, 2011.

On January 31, 2011, the State Board of Elections adopted this regulation relating to voter registration. The final regulation was published in Volume 27, Issue 13 of the February 28, 2011, edition of the Virginia Register of Regulations (27:13 VA.R. 1484-1485 February 28, 2011) with an effective date upon filing a notice of the United States Attorney General's preclearance with the Registrar of Regulations. The State Board of Elections hereby notices the United States Attorney General's approval of this regulation via a letter dated October 24, 2011, from T. Christian Herren, Jr., Chief, Voting Section, to Joshua N. Lief, Esq., Senior Assistant Attorney General, Office of the Attorney General of Virginia. The effective date of this regulation is November 1, 2011. Copies are

available online at <http://townhall.virginia.gov/L/ViewXML.cfm?textid=5303>; by telephone toll-free 1-800-552-9745 or local (804) 864-8910; by written request to FOIA Coordinator, 1100 Bank Street, Richmond, VA 23219; or by email request to foia@sbe.virginia.gov.

For more information, please contact Martha Brissette, Policy Analyst, State Board of Elections, Richmond, VA, telephone (804) 864-8925, FAX (804) 786-0760, or email martha.brissette@sbe.virginia.gov.

NOTICE OF EFFECTIVE DATE

1VAC20-80. Recounts and Contested Elections (adding 1VAC20-80-10, 1VAC20-80-20).

Effective Date: November 1, 2011.

On January 31, 2011, the State Board of Elections adopted this regulation relating to election administration. The final regulation was published in Volume 27, Issue 14 of the March 14, 2011, edition of the Virginia Register of Regulations (27:14 VA.R. 1700-1701) with an effective date upon filing a notice of the United States Attorney General's preclearance with the Registrar of Regulations. The State Board of Elections hereby notices the United States Attorney General's approval of this regulation via a letter dated October 24, 2011, from T. Christian Herren, Jr., Chief, Voting Section, to Joshua N. Lief, Esq., Senior Assistant Attorney General, Office of the Attorney General of Virginia. The effective date of this regulation is November 1, 2011. Copies are available online at <http://townhall.virginia.gov/L/ViewXML.cfm?textid=5337>; by telephone toll-free 1-800-552-9745 or local (804) 864-8910; by written request to FOIA Coordinator, 1100 Bank Street, Richmond, VA 23219; or by email request to foia@sbe.virginia.gov.

For more information, please contact Myron McClees, Policy Analyst, State Board of Elections, Richmond, VA, telephone (804) 864-8949, or email myron.mcclees@sbe.virginia.gov.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

FORENSIC SCIENCE BOARD

6VAC40-60. DNA Data Bank Regulations (adding 6VAC40-60-10 through 6VAC40-60-60).

Written public comments may be submitted until January 20, 2012.

Summary:

Pursuant to § 19.2-310.5 of the Code of Virginia, the proposed regulation establishes the methods for obtaining information from the Virginia DNA data bank and procedures for verifying the identity and authority of persons requesting information from the Virginia DNA data bank.

The proposed regulations (i) allow police departments, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), attorneys for the Commonwealth or the United States Department of Justice, and the Office of the Chief Medical Examiner to gain access to information in the Virginia or federal DNA databases in connection with the submission of physical evidence for forensic laboratory examination; (ii) specify how law-enforcement officers may submit a request for information; (iii) mandate that information provided to DOC and DJJ be transmitted through a secure electronic exchange; (iv) specify that information requested about out-of-state forensic examinations will be governed by the Combined DNA Index System (CODIS) manual; and (v) clarify that the rules by which criminal defendants and their lawyers may access information in DNA databanks are found in § 9.1-1104 of the Code of Virginia.

For more information, please contact Stephanie Merritt, Department Counsel, Department of Forensic Science, Richmond, VA, telephone (804) 786-6848, FAX (804) 786-6857, or email stephanie.merritt@dfs.virginia.gov.

CHARITABLE 11. GAMING

CHARITABLE GAMING BOARD

11VAC15-22. Charitable Gaming Rules and Regulations (repealing 11VAC15-22-10 through 11VAC15-22-120).

11VAC15-31. Supplier Regulations (repealing 11VAC15-31-10 through 11VAC15-31-60).

11VAC15-40. Charitable Gaming Regulations (adding 11VAC15-40-10 through 11VAC15-40-430).

A public hearing will be held on December 13, 2011, at 10:15 a.m. at the Virginia Department of Agriculture and Consumer Services. Written public comments may be submitted until January 6, 2012.

Summary:

The proposed regulation consists of five parts pertaining to (i) definitions, (ii) charitable gaming organizations and the conduct of charitable gaming, (iii) charitable gaming suppliers, (iv) electronic games of chance systems, and (v) administrative process. The section pertaining to charitable gaming organizations and the conduct of charitable gaming reflects the substance of the current regulation titled Charitable Gaming Rules and Regulations, 11VAC15-22. The section pertaining to charitable gaming suppliers reflects the substance of the current regulation titled Supplier Regulations, 11VAC15-31. The section pertaining to electronic games of chance systems includes rules for the conduct of electronic games of chance, requirements for manufacturers and suppliers of electronic games of chance systems, and construction and other standards for electronic games of chance systems. The sections pertaining to definitions and the administrative process consolidate the definitions and administrative process sections found in the current regulations, 11VAC15-22 and 11VAC15-31.

For more information, please contact Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, Richmond, VA, telephone (804) 786-1308, FAX (804) 371-7479, TTY (800) 828-1120, or email erin.williams@vdacs.virginia.gov.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-20, 18VAC110-20-275, 18VAC110-20-690, 18VAC110-20-700; adding 18VAC110-20-685, 18VAC110-20-725, 18VAC110-20-726, 18VAC110-20-727, 18VAC110-20-728).

A public hearing will be held on December 14, 2011, at 9 a.m. at the Department of Professional and Occupational Regulation. Written public comments may be submitted until January 20, 2012.

Summary:

Chapter 28 of the 2010 Acts of the Assembly requires the Board of Pharmacy to promulgate regulations to authorize (i) community services boards (CSBs) and behavioral health authorities (BHSs) to possess, repackage, and deliver or administer medications and (ii) crisis stabilization units to store and administer a stock of drugs needed for emergency treatment. The proposed amendments set forth requirements for registration of a CSB or BHA to possess, repackage, and deliver or administer drugs and for a program to train nonpharmacists in repackaging for CSBs or BHAs. The proposed regulations include labeling, storage, recordkeeping, destruction, and other requirements for repackaging in these facilities (which do not have a pharmacy); persons authorized to repackage; and information to clients about repackaged drugs. In addition, the proposed regulations include curricula and instructional criteria for approval of repackaging training programs and for expiration and renewal of program approval and include provisions for stocking, recordkeeping, and administration of Schedule VI controlled substances at a crisis stabilization unit for immediate treatment of patients as necessary.

For more information, please contact Caroline Juran, RPh, Executive Director, Board of Pharmacy, Richmond, VA, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.



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