



“All laws enacted at a regular session, . . . excluding a general appropriation law, shall take effect on the first day of July following the adjournment of the session of the General Assembly at which it has been enacted.”

Constitution of Virginia, Article IV, Section 13

In Due Course: 2005 Changes to Virginia's Laws

This publication provides a brief summary of legislation passed by the 2005 General Assembly that is of interest to the citizens of Virginia and is likely to have an impact on their daily lives. The legislation has been signed by the Governor and most is due to go into effect on July 1, 2005. The summaries were prepared by the staff of the Division of Legislative Services.

Conservation/Environment

Water Quality Improvement Fund. \$50 million will be appropriated from the general fund to the Water Improvement Quality Fund on July 1, 2005. The money is to be used solely to finance the costs of design and installation of biological nutrient removal facilities or other nutrient removal technologies at publicly owned sewage systems. In addition, beginning July 1, 2005, the annual appropriations to the fund will be allocated to the Department of Conservation and Recreation to be used for the implementation of best management practices that reduce nitrogen and phosphorous nonpoint source pollution, as well as to the Department of Environmental Quality to make grants to significant dischargers and treatment works that utilize the Public-Private Education Facilities and Infrastructure Act to design and install state-of-the-art nutrient removal technology.

Nutrient trading. Establishes a nutrient exchange or trading program that would allow

point source dischargers to achieve and maintain compliance with the waste load cap allocations for nitrogen and phosphorous delivered to the Chesapeake Bay and its tidal tributaries.

Virginia Migratory Waterfowl Conservation Stamp. A person must obtain a \$9.75 stamp in order to hunt migratory waterfowl.

Nonindigenous aquatic nuisance species (snakehead fish). Anyone who knowingly introduces a snakehead fish into the Commonwealth will be guilty of a Class 1 misdemeanor.

Landfills. The distance that a landfill can be sited from a surface water or a groundwater supply intake or reservoir will be reduced from five miles to three miles. However, a landfill can be constructed as close as one mile from any existing surface or groundwater supply if the landfill meets certain conditions. The law also increases the acreage threshold for allowing a landfill to be constructed or expanded in a nontidal wetland.

Unemployment Compensation

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

Local Government

Cash proffers. No locality may require payment of a cash proffer prior to issuance of a building permit; however, a landowner may voluntarily agree to an earlier payment. Also, no locality shall either request or accept a cash proffer whose amount is scheduled to increase annually, from the time of proffer until tender of payment, by a percentage greater than the annual rate of inflation. Another measure requires that any locality that accepts a cash payment voluntarily proffered shall, within seven years of receiving full payment, begin construction or other improvements for which the cash payment was proffered.

Drugs

Penalties for methamphetamine manufacture. The penalty for a first conviction of manufacturing certain amounts of methamphetamine or mixtures containing methamphetamine will increase from a range of five to 40 years to a range of 10 to 40 years; for a second conviction, from five years to life to 10 years to life; and for a third or subsequent conviction, 10 years to life with a mandatory minimum term of imprisonment of three years. Also, it will be a felony punishable by imprisonment of 10 to 40 years for any person in a custodial relationship over a child under the age of 18 to knowingly allow that child to be present during the manufacture or attempted manufacture of methamphetamine.

Possession of methamphetamine precursors. Any person who possesses any two or more of specified "precursor chemicals" with the intent to manufacture methamphetamine, methcathinone or amphetamine will be guilty of a Class 6 felony.

Alcoholic Beverages

Underage drinking. Underage consumption of alcohol will be a criminal offense, and anyone who aids or assists in providing alcohol to an underage person will be guilty of a Class 1 misdemeanor.

Wine and beer license for day spas. A day spa license will allow the licensee to give no more than two five-ounce glasses of wine or one 12-ounce glass of beer to a customer of a day spa for on-premises consumption.

Banquet license. A manufacturer of beer or wine will have to obtain only one banquet license for a special event lasting no more than three consecutive days. Current law provides that a banquet license is required for each day of an event. The state and local license taxes for the three-day banquet license will increase to \$100 and \$20 respectively.

DUI

Death caused by drunk boating. Any person who unintentionally causes the death of another person as a result of operating a watercraft or motorboat while intoxicated will be guilty of involuntary manslaughter.

Driving under the influence of illegal drugs. To drive with specified levels of cocaine, methamphetamine, phencyclidine (PCP) or ecstasy (MDMA) in one's blood will be a violation of the DUI statute.

Taxes

Sales tax on food. The sales tax on food purchased for human consumption will decrease to 2.5 percent (1.5 percent state and 1 percent local) on July 1, 2005.

Business

Impact of regulations on small businesses. The Department of Planning and Budget will be required to estimate the projected reporting, record-keeping and other administrative costs to small businesses for compliance by such small businesses with regulations. The Department will include a description of any alternative method for achieving the purpose of the regulation while minimizing adverse impact on small businesses. The law also requires agencies to periodically review their regulations to minimize the economic impact on small businesses.

Preference for Virginia firms in public procurement. Whenever the lowest responsive and responsible bidder is a resident of a state whose laws allow a resident contractor a preference, a like preference shall be allowed to the lowest responsible bidder who is a resident of Virginia. If the lowest bidder is a resident of another state with an absolute preference, that bid shall not be considered. The Department of General Services will post and maintain information on the agency's website regarding preferences provided by other states.

Economic Development

Virginia Economic Development Partnership Authority. Authorities, state agencies, and institutions of higher education will jointly develop and implement a rural economic development strategic plan that addresses: (i) education, (ii) infrastructure, (iii) traditional industrial development and industry retention programs, (iv) recreational and cultural enhancement and related quality of life measures, (v) agribusiness incentives, and (vi) a revolving loan fund or loan guarantee program to help start or expand entrepreneurial activities, especially small business activities in rural communities.

Education

Waivers to the No Child Left Behind Act. The Board of Education will seek waivers from compliance with provisions of the No Child Left Behind

Act that are (i) in conflict with part of the federal Code; (ii) duplicative of Virginia's Standards of Quality, Standards of Learning, and Standards of Accreditation; or (iii) lacking in effectiveness. The Board must examine the fiscal and other implications for the Commonwealth and its local governments in the event that Virginia continues its compliance with, or withdraws from participation in, the federal No Child Left Behind Act.

High school athletes. The Virginia High School League must establish rules requiring that, upon disclosure, a public school student athlete who uses anabolic steroids will be ineligible to participate in interscholastic athletic competition for two years, unless the steroid was prescribed by a licensed physician for a medical condition. The Board of Education must also suspend or revoke the administrative or teaching license of any person who procures, sells, or administers anabolic steroids or fails to report student use of anabolic steroids.

Codes of Conduct. The Board of Education must include provisions addressing gang-related activities in its model guidelines for codes of student conduct.

Bullying in schools. Directs the Board of Education to include bullying in its standards for school board policies on student conduct and requires school boards to include (i) instruction on the inappropriateness of bullying in their character education programs and (ii) bullying provisions in their student conduct codes. The measure requires the reporting of incidents of stalking to principals and division superintendents. Principals must report certain violent acts, stalking, and other conduct to parents of the minor student who is the target of the conduct.

Teacher licensure by reciprocity. Provides for teacher licensure for an individual who has obtained a valid out-of-state license that is in force at the time the application for a Virginia license is made.

Education for children of deceased military personnel. Adds the children of parents who are killed or disabled as a result of service in military

operations against terrorism, a peace-keeping mission, or a terrorist act subsequent to December 6, 1941, to the list of children eligible to attend public institutions of higher education or other public accredited postsecondary institutions. The law clarifies that the children of members of the United States Armed Services Reserves and the Virginia National Guard Reserve called to active military duty and who are killed in action or are totally and permanently disabled are also eligible for such benefits.

Health

Midwives. The Board of Medicine will license those persons who have obtained the Certified Professional

Midwife credential to practice midwifery pursuant to regulations adopted by the Board of Medicine. The Board of Medicine will adopt regulations that (i) address the requirements for licensure to practice midwifery, (ii) are consistent with the current job analysis for the profession except that prescriptive authority and the possession and administration of controlled substances shall be prohibited, (iii) ensure independent practice, (iv) provide for an appropriate license fee, and (v) include requirements for licensure renewal and continuing education. The law provides immunity to physicians, nurses, pre-hospital.

Prescription Monitoring Program. Expands the Prescription Monitoring Program to include reporting by

Medical Malpractice

Among the numerous changes to medical malpractice statutes that will go into effect on July 1, 2005, are the following:

- Before service of process is made, an expert witness will be required to certify that the health care practitioner deviated from the standard of care and that such deviation is a proximate cause of the injuries claimed.
- An expression of sympathy or general sense of benevolence to a patient or a patient's relative is not admissible as evidence of an admission of liability.
- If the patient's physical or mental condition is at issue, signs and symptoms, observations, evaluations, and histories obtained or formulated as contemporaneously documented during the course of the practitioner's treatment may be disclosed.
- The definition of malpractice is revised to limit it to a tort or contract action for personal injuries or wrongful death.
- Medical malpractice liability insurers will be required to submit annual reports to the State Corporation Commission stating information regarding claims made against health care providers.
- The Board of Medicine will require a competency assessment of any person it licenses on whose behalf three medical malpractice claims are paid in a 10-year period.

out-of-state dispensers (nonresident pharmacies) and to cover the entire Commonwealth. To assist in verifying the validity of a prescription, the law extends the authority to query the system to prescribers licensed in other states and to pharmacists. The fourth and fifth enactment clauses of Chapter 481 of the 2002 Acts of Assembly are repealed to remove the funding contingencies and the restriction on the application of the program to a pilot project covering the southwestern region of Virginia. The program requires the reporting of "covered substances," that, pursuant to this law, will include all controlled substances in Schedules II, III, and IV of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1. Emergency regulations must be promulgated by the Director. Although the law will be effective in due course, i.e., July 1, 2005, its provisions will not be implemented or enforced until the date on which the emergency regulations become effective.

Newborn screening. Broadens the Commonwealth's mandated newborn screening program for genetic disorders to include approximately 30 or more conditions that cause mental retardation, serious disability, or death if left untreated. *Note: Effective March 1, 2006.*

Virginia Immunization Information System (VIIS). Requires the Board of Health, to the extent funds are appropriated by the General Assembly or otherwise made available, to establish the Virginia Immunization Information System, a statewide immunization registry that consolidates patient immunization histories from birth to death into a complete, accurate, and definitive record that may be made available to participating health care providers throughout Virginia.

Public Safety

Statewide Emergency Medical Services Plan. Adds several new requirements to the Statewide Emergency Medical Services Plan developed by the Board of Health. These requirements include (i) publishing the Plan, (ii) expanding paramedic and advanced life support training, (iii) establishing and maintaining a process for crisis

intervention and peer support services for emergency medical services and public safety personnel, a statewide emergency medical services for children program, a statewide system of health and medical emergency response teams, and a program to improve dispatching of emergency medical services, and (iv) identifying and establishing best practices for managing agencies and improving response times.

Immunity for first responders. Provides immunity from liability for volunteers serving in Medical Reserve Corps (MRC) units or on Community Emergency Response Teams (CERT). These are groups of medical professionals and others who are being organized to assist the citizens of Virginia in the event of bioterrorism or other hazardous events.

Sex Offender and crimes Against Minors Registry Act. Amends the Act to add murder of a child under 18 to the list of crimes for which registration and internet posting is required, and sexual battery against a child under six by a perpetrator 18 or older to those crimes classified as sexually violent offenses. The law requires that a sex offender who must register in his home state register in Virginia when he moves here, regardless of whether the underlying criminal offense is similar to a Virginia offense. The law also requires the registration of a nonresident in Virginia for an extended visit (30 days or more).

Firearm possession unlawful for juveniles adjudicated delinquent of certain crimes. Makes it unlawful for a person adjudicated delinquent on or after July 1, 2005, of murder, kidnapping, armed robbery, or rape who was 14 years of age or older at the time of the offense to possess or transport firearms, stun weapons, tasers, or concealed weapons for the rest of his life.

Transportation

Motorcycle safety inspection fees. Increases motorcycle fee from \$5 to \$12 (\$10 to go to inspection stations, \$1.50 to Motorcycle Rider Safety Training Fund, and \$.50 to State Police for a safety inspection program. *Note: Effective January 1, 2006.*

Reflectors required on utility trailers. Reflectors or reflective materials required on the rear of a utility trailer (body and tailgate consisting primarily metal mesh) that does not require state inspection. The reflectors are to be applied so as to outline the rear end of the trailer.

Displaying movies while driving. Prohibits the driver from viewing movies or similar video displays while driving. A television receiver or video screen cannot be located forward of the driver's seat or within the view of the driver.

Displaying obscene videos in a vehicle. Prohibits the display of any obscene movie or video that is obscene if the video display can be seen by persons outside the vehicle.

Driving oversized vehicles through tunnels. Any person who drives or attempts to drive an oversized vehicle that exceeds the permitted height through or into a tunnel is guilty of a Class 3 misdemeanor (fine of up to \$500) and will be assessed three driver demerit points.

Use of optical detection systems in identifying oversized vehicles. Authorizes VDOT to use optical detection systems to identify vehicles that exceed overhead clearance of the westbound lane of the Hampton Roads Bridge Tunnel.

Miscellaneous

State bat. The Virginia Big-eared Bat (*Corynorhinus townsendii virginianus*) will be the official bat of the Commonwealth.

Shooting of arrows in populated areas. Counties may prohibit the outdoor shooting of arrows in heavily populated areas. Bows intended to be used as toys are excluded from the provisions.

Phishing. It will be a Class 6 felony to fraudulently obtain, record, or access from a computer identifying information of another, including social security number, driver's license number, bank account numbers, credit or debit card numbers, and personal identification numbers. Any person who sells or distributes such information or uses it

to commit another crime will be guilty of a Class 5 felony.

Latino Advisory Board. The new Latino Advisory Board will advise the Governor regarding the development of economic, professional, cultural, educational, and government links between the Commonwealth of Virginia, the Latino community in Virginia, and Latin America. *Note: Effective October 15, 2005.*

Illegal aliens; eligibility for public benefits. Provides that no person who is not a U.S. citizen or legally present in the United States is eligible for any state or local public benefits. The law defines state and local public benefits, and sets forth a series of exceptions to this eligibility rule. The law also requires applicants for state or local assistance to provide proof of legal presence in the United States and establishes a process for temporary receipt of benefits when applicants cannot provide such proof. *Note: Effective January 1, 2006.*

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considered by the
2005 General Assembly.



New Special License Plates

New Special License Plates
Approved by the
2005 Session
of the General Assembly

Recipients of:

National Defense Service Medal
War on Terrorism Service Medal

Members of:

The Veterans of Foreign Wars of the
United States
The Virginia Division of the United
Daughters of the Confederacy
The Northern Virginia Swim League
The Virginia State Defense Force

Members and former members of:

U.S. Naval Construction Force

Graduates and supporters of:

U.S. Merchant Marine Academy

Supporters of:

The Shenandoah National Park
Association
The Rocky Mountain Elk Foundation
The Surfrider Foundation
The Robert Russa Moton Museum*
The Salem Avalanche baseball team
The On the Rebound Bulldog Rescue
Foundation
Children with special needs*
Education and the public schools of
Virginia*

People who are:

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Master Gardeners
Virginia scuba divers
Law-enforcement chaplains or former
law-enforcement chaplains
Interested in contributing to the
Virginia Housing Partnership
Revolving Fund*
Interested in contributing to lung cancer
research, awareness, and prevention*
Veterans of the United States Army
Unremarried surviving spouses of United
States Marine Corps veterans

Members and supporters of:

The Mustang Club of America
The Junior League
The Virginia Association for Community
Conflict Resolution*

Other:

Celebrating the 100th Anniversary of the
City of Galax*
Celebrating Virginia wines*
Special license plates bearing the names,
numbers, and color schemes used by
professional stock car drivers*

** Denotes a revenue-sharing special license plate,
which is subject to a \$25 annual surcharge.
Once at least 1,000 sets of these plates are sold,
\$15 of each \$25 annual surcharge goes to
support some specified entity.*

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