



“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: 2008 Changes to Virginia's Laws

This publication provides a brief summary of legislation passed by the 2008 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, 2008. The summaries were prepared by the staff of the Division of Legislative Services.

Alcoholic Beverages

Alcoholic beverage Sunday sales. The law allows ABC stores to be open on Sunday in any city with a population of 100,000 or more. Since 2004, ABC stores may be open, at the discretion of the ABC Board, in the Counties of Fairfax, Arlington, Loudoun, and Prince William, and in the Cities of Alexandria, Fairfax City, Manassas, Manassas Park, Norfolk, and Virginia Beach. The law adds the Cities of Portsmouth, Hampton, Newport News, Richmond, and Chesapeake.

Alcoholic beverage control of sangria. The law defines sangria and allows a mixed beverage licensee to make sangria. The law also provides that a licensee may not be prohibited by regulation from pre-mixing containers of sangria to be served and sold in pitchers for consumption on the licensed premises.

Adoption & Child Welfare

Adoption. The law provides that any home study conducted for the purpose of parental placement or agency placement will be valid for a period of 36 months from the date of completion of the study. The Board of Social Services may require by regulation an additional state criminal background check before finalizing an adoption if more than 18 months have passed from the completion of the home study.

Foster care. The law grants circuit courts and juvenile and domestic relations district courts the authority to grant visitation rights to siblings, in addition to the natural parents and grandparents, of any child entrusted or committed to foster care.

Adoption by former stepparents. The law allows former stepparents to adopt the child they were a stepparent to as if they were still the stepparent of

the child. The law also allows parents who adopted a child in a foreign jurisdiction, who then divorced before the child was adopted in Virginia, to adopt or readopt the child.

Admissibility of mental health care records in custody and visitation cases. The law repeals the current law that provides that in any case in which custody or visitation of a child is at issue, the mental health records concerning a parent will be privileged and confidential and the mental health care provider may not be required to testify on behalf of or against a parent or any of the parent's adult relatives.

Virginia Military Parents Equal Protection Act. The law allows a court to enter a temporary order modifying custody or visitation based on a parent's military deployment. The law also provides that upon the motion of the parent returning from a deployment, the court will hold a custody hearing within 30 days, and the nondeploying parent bears the burden of showing that the custody or visitation order in effect before the deployment is no longer in the child's best interests.

Business & Labor

Social security numbers. The law prohibits the dissemination of another person's social security number, regardless of whether the number is obtained from a public or private record. Currently, the prohibition against dissemination only applies to social security numbers obtained from private sources.

Credit reports. The law authorizes any consumer to freeze access to his credit report. If a consumer has placed a freeze on his credit report, a consumer reporting agency is

prohibited from releasing the credit report, or any information in it, without the consumer's express authorization. The law provides a means by which a consumer can release his report permanently, temporarily, or to a specific third party.

Credit card theft. The law provides a civil penalty of not more than \$2,500 per violation for the improper use of a credit card number.

Payday Loan Act. The law requires the State Corporation Commission to certify and contract with one or more third parties to develop, implement, and maintain an Internet-accessible database by January 1, 2009. Commencing on that date, payday lenders will be required to query the database prior to making any loan to determine whether the loan is permissible. Other new requirements on payday loans also take effect on that date.

Unemployment compensation maximum weekly benefit. The law increases the maximum weekly unemployment compensation benefit from \$363 to \$378 for claims effective on or after July 6, 2008.

Employing illegal aliens. The law provides that the authority of certain business entities, including foreign and domestic corporations, limited liability companies, business trusts, and limited partnerships, to operate in the Commonwealth may be terminated involuntarily or revoked upon the conviction of the business entity for a violation of 8 U.S.C. § 1324a(f) (hiring or continuing to employ illegal aliens). A business entity whose authority to operate in the Commonwealth is terminated or revoked is not eligible to have that authority reinstated for a period of not less than one year.

The business entity will immediately report any conviction to the State Corporation Commission and file an authenticated copy of the judgment or record of conviction.

Fire-safe cigarettes. The law prohibits the manufacture, sale, or offer for sale of cigarettes within the Commonwealth, or to persons located in the Commonwealth, unless the cigarettes have been tested to determine that they meet a performance standard for fire safety. The test predicts the likelihood that a cigarette will ignite material with which it comes in contact.

Courts & Criminal Justice

Involuntary commitment and outpatient treatment. The law changes the criteria for emergency custody orders, temporary detention orders, and involuntary commitment proceedings so that a person may be taken into emergency custody, placed under temporary detention, or involuntarily committed where it is found that the person has a mental illness and there exists a substantial likelihood that the person will, in the near future, cause serious physical harm to himself or others or suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs. The law also provides that a person who meets the criteria for involuntary commitment may be ordered to mandatory outpatient treatment if less restrictive alternatives to involuntary inpatient treatment are appropriate and are available. The law also makes numerous changes concerning the commitment procedure.

Medical malpractice. The law defines the term "professional services in nursing homes" in the context of medical malpractice actions as services provided to a patient by a health care provider,

including psycho-social services, personal hygiene, hydration, nutrition, fall assessments or interventions, patient monitoring, prevention and treatment of medical conditions, diagnosis or therapy.

Slayer statute. The law amends the definition of "slayer" to include (i) a person who is convicted of voluntary manslaughter, and (ii) a person who is acquitted of murder or involuntary manslaughter, but who is determined, by a preponderance of the evidence by a court to have committed murder or involuntary manslaughter. The law also provides that insurance companies are not liable on life insurance policies acquired by the slayer for the decedent if (i) the policy was procured by the slayer as part of the plan to murder the decedent, and (ii) the decedent died within two years of the issuance of the policy as a result of the slayer's act. The law also provides that the slayer statute does not serve to abrogate any common law right or remedy that prevents a slayer from profiting from his crime.

Aggravated sexual battery. The law makes it a Class 1 misdemeanor for any person 18 years of age or older to, with lascivious intent, kiss a child under the age of 13 on the mouth while knowingly and intentionally penetrating the mouth of the child with his tongue. A convicted offender must register on the sex offender registry.

Animal protection and fighting. The law makes it a Class 1 misdemeanor to participate in the fighting of any animals, including roosters. Possession of any materials intended to enhance the ability of any animals to fight, permitting a minor to become involved in animal fighting, or wagering on animal fighting raises the Class 1 misdemeanor to a Class 6 felony. Dog fighting

remains a Class 6 felony without any of those additional factors. Animals that are the subject of criminal charges may be forfeited to the locality, but the owner may post bond to retain his ownership interest and repossess the animals if the court issues a finding of not guilty. Law-enforcement officers would be permitted to conduct searches at any time upon the issuance of warrants.

Repeal of abuser fees. The law repeals § 46.2-206.1, which provides for the imposition of civil remedial fees on certain drivers and provides for the Comptroller to issue a refund to persons who have already paid fees ordered to be paid by a court. It directs the clerk of the court that ordered the fees and DMV to credit the accounts of persons who still owe the fees so as to indicate that they have been paid and are no longer outstanding. DMV is also directed to reinstate the driver's license of any person whose license was suspended solely for failure to pay civil remedial fees.

Suspended license and unpaid fines. The law allows a person who can show good cause to the court and upon proof of employment to drive on a six-month restricted permit while his regular driver's license is suspended if it was suspended for failure to pay fines and costs.

Punishment for underage DUI. The law makes "zero tolerance" (0.02% Blood Alcohol Content as opposed to 0.08% for a DUI) underage drinking and driving punishable as a Class 1 misdemeanor. A Class 1 misdemeanor carries a potential \$2,500 fine and a potential one year in jail, the same as a first offense DUI. Currently, the punishment for "zero tolerance" underage drinking and driving is loss of license for six months and a fine of no more than \$500. This law calls for the loss of a driver's license for a period of one year and either a

mandatory minimum fine of \$500 or 50 hours of community service, plus the potential for Class 1 misdemeanor punishment. The law will be in effect until July 1, 2010, and may be reenacted after that.

Virginia Military Parents Equal Protection Act.
See Adoption and Child Welfare.



Firearms

Gun purchases and mental health treatment.

The law requires that all information regarding involuntary mental health treatment, regardless of whether treatment is mandated on an inpatient or outpatient basis, be forwarded to the Central Criminal Records Exchange for purposes of determining if a person is eligible to purchase or possess a firearm. The law also makes it illegal for a person who is found incompetent to stand trial, and ordered to receive mental health treatment, to purchase or possess a firearm. Finally, if a person is the subject of a temporary detention order, and agrees to voluntarily seek mental health treatment prior to a detention hearing, that person will also be prohibited from purchasing or possessing a firearm.

Gun purchases and illegal aliens. The law prohibits the sale or transfer of firearms to any person who is not a citizen of the United States and who is not lawfully present in the United States. A violation of the law is a Class 6 felony.



Mortgages and Home Ownership

Mortgage loans. The law requires high-risk mortgage lenders or servicers to provide written notice of the intention to send a notice to accelerate the loan balance 10 business days prior to sending the notice of acceleration. If the borrower indicates the desire to avoid foreclosure, the high-risk mortgage lender or servicer will give the borrower 30 calendar days' forbearance. The measure does not apply if the lender makes fewer than four mortgage loans in any 12-month period, if there is an active bankruptcy proceeding, or if a foreclosure sale is scheduled to occur within 30 days.

Appraisal fees. The law requires any lender providing a loan secured by a first mortgage on real estate containing not more than four residential dwelling units to disclose on the settlement statement any fee charged to the borrower for an appraisal and any fee charged to the borrower for a valuation or opinion of value prepared using an automated or other mechanism prepared by a person who is not licensed as an appraiser.

Title insurance agents. The law requires applicants for resident title insurance agent licenses to have completed, within the year preceding application and examination, at least 16 hours of instruction through a classroom or distance education.

Home ownership protection. The "Home Ownership Protection Act" amends the Mortgage Lender and Broker Act to (i) require the State Corporation Commission to conduct criminal background checks through the Central Criminal Records Exchange on every member, senior officer, director, and principal of a licensee; (ii) require licensees to conduct background checks on certain employees; (iii) require licensees to ensure that employees are properly trained in applicable state and federal mortgage lending laws and regulations; (iv) authorize the Attorney General to bring actions to enjoin violations of the federal Real Estate Settlement Procedures Act to the extent authorized by provisions of that Act; and (v) provide that a mortgage lender's or broker's license can be suspended or revoked for failing to pay appraisal fees. The measure also increases the fines that may be assessed for violations of the Mortgage Lender and Broker Act.

Foreclosure rescue. The law makes participating in or servicing foreclosure rescues for profit with the intent to defraud a consumer a violation of the Virginia Consumer Protection Act.

CRESPA. The law increases the required surety bond under the Consumer Real Estate Settlement Protection Act from \$100,000 to \$200,000.

Public Education

Nutrition and physical fitness best practices database.

The law was a recommendation of the Joint Subcommittee studying childhood obesity and it requires the Department of Education to develop a database of local school divisions' best practices regarding nutrition and physical education, including results of wellness-related fitness assessments. No school division will be required to submit information, but all should be encouraged to learn about programs that have succeeded in other school divisions

Family life education. The law requires the Board of Education to include instruction on mental health education and awareness in family life education curriculum.

Expression of religious viewpoints. The law affirmatively provides that a student's voluntary expression of a religious viewpoint on an otherwise permissible subject must not be discriminated against by local school divisions. Permissible subjects include, but may not be limited to: classroom, homework, and oral assignments.

Child abuse and school employees. The law prohibits the hiring of an applicant for employment when the employee will have direct contact with students if the applicant is the subject of a founded case of physical or sexual abuse of a child. The law requires the dismissal of a teacher who becomes the subject of a founded case of physical or sexual abuse of a child and has exhausted all available appeals. This law also requires the Department of Social Services to report any founded complaints of sexual abuse of a child to a school board, where the subject of the report is a full-time, part-time, permanent or temporary teacher in a school division located within the Commonwealth.

Textbook purchasing contracts. The law permits local school boards to enter into contracts with textbook publishers for the purchase of textbooks, rather than requiring the Board of Education to do so, as is current practice. It also expands the definition of textbook.

Textbook purchasing contracts in private schools. The law permits any private school to purchase from a local school board's contract with the publisher, with the approval of both the local school board and the publisher.

Higher Education

Notification of mental health treatment. The law requires the board of visitors or other governing board of any public institution of higher education to establish policies and procedures requiring the notification of a parent of a dependent student when a student receives mental health treatment at the institution's student health or counseling center and it has been determined that there exists a substantial likelihood that, as a result of mental illness, the student will, in the near future, (i) cause serious physical harm to himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs.

Student records. The law requires the board of visitors or other governing board of any public institution of higher education to establish policies and procedures requiring the release of a student's educational record if the parent requesting the record claims the student as a dependent.

Student lending policies. The law requires the State Council of Higher Education to develop policies and procedures for disclosing certain information to students on student lending practices. This information will include (i) the criteria used to determine which lenders, if any, are recommended or endorsed by the school, and (ii) explicit notification that students are free to borrow from any lender of their choosing and are not limited to a list offered by the school. Also, the law prohibits public institutions of higher education from entering into exclusive agreements with vendors regarding student loans, and prohibits employees from accepting gifts to induce endorsement of certain vendors.

Elections

Absentee voting. The law adds pregnancy to the list of reasons that a voter may give to be entitled to vote absentee.

Campaign finance disclosure. Any town may adopt an ordinance to provide that its town elections and local candidates will be subject to the Campaign Finance Disclosure Act and the law regulating political campaign advertisements. Currently only town elections in towns of 25,000 or more population (Blacksburg and Leesburg) are subject to those laws.

Emergency Management

Crisis and emergency management plans in colleges. The law mandates that each public institution of higher education in Virginia develop and adopt a written crisis and emergency plan. The governing body of each public institution must review, revise, and readopt the plan every four years. This requirement is similar to the

requirements of localities to adopt and review emergency management plans. Each campus must also establish a threat assessment team to develop a threat-assessment policy, and must establish a first warning and emergency broadcast system. The first warning system may use modes of communications such as emails, voicemails, text messages, and public address systems.

Energy

Renewable energy. The law requires investor-owned electric utilities to report annually on their efforts to conserve energy. The measure also requires the Virginia Energy Plan to be updated by July 1, 2010, and every four years thereafter. Currently, the Energy Plan is required to be updated in July 2012 and every five years thereafter. The measure also requires utilities to report annually on their efforts to meet the renewable portfolio standard goals, renewable generation overall, and relevant advances in renewable energy generation technology.

Solar energy collection. The law provides that a community association will not prohibit an owner from installing or using any solar energy collection on the owner's property; but an association may establish reasonable restrictions concerning the size, place, and manner of placement of the solar energy collection devices.

Health

Transparency in health care costs. This law requires the Department of Health to negotiate and contract with a nonprofit organization for an annual survey of health insurance carriers, to determine the average costs for 25 common outpatient procedures and the average

reimbursement paid for a specific service from all providers and provider types, and to make information available to the public through a website operated by the nonprofit organization.

Advance Health Care Directive Registry. The law requires the Department of Health to create and maintain a secure online central registry for advance health care directives. The law specifies that when sufficient funds are available, the Department will make the registry available to the public by contracting with an appropriate vendor, directing the public to an existing registry maintained by another entity, or entering into a public-private partnership.

Veterans Services. The law requires the Department of Veterans Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, and Department of Rehabilitative Services to cooperate in establishing a program to monitor and coordinate mental health and rehabilitative services support for Virginia veterans and members of the Virginia National Guard and Virginia residents in the Armed Forces Reserves not in active federal service.

Donation of prescription medications. The law requires the Board of Pharmacy to develop regulations to establish a Prescription Drug Donation Program to accept certain unused previously dispensed prescription drugs and re-dispense the drugs to patients of clinics organized for the care of indigent patients.

Notification of mental health treatment. See Higher Education.

State earned income tax credit notice. The law requires the Department of Social Services to provide notice of the federal and state earned

income tax credit to all recipients of Temporary Assistance for Needy Families (TANF), food stamps, or certain medical assistance. Notice will be mailed to recipients annually and include information on the qualifying income levels, amount of credit available, process for applying for the credit, and availability of assistance in applying for the credit.

Insurance

Health care sharing ministries. The law declares that insurance laws do not apply to a health care sharing ministry. A health care sharing ministry that, through its publication to members, solicits funds for the payment of medical expenses of other members, will not be considered to be engaging in the business of insurance and will not be subject to the jurisdiction of the State Corporation Commission.

HMOs. The law removes limitations on the deductibles or co-payments, or both, that a health maintenance organization may require enrollees to pay.

Insurance agents. The law requires the insurer, rather than the State Corporation Commission, to notify an appointed agent of the status of his appointment. The notice will be given within five business days of the insurer's receipt of notice from the Commission that the appointment of the agent is valid or invalid. An agent is prohibited from selling or soliciting insurance after receiving notice of an invalid appointment.

Insurance policies. The law establishes exceptions to prohibitions on the refusal to renew certain liability, fire, and motor vehicle insurance policies. Renewal provisions will not apply to an

insurer if an affiliated insurer has manifested its willingness to provide coverage at a lower premium than would have been charged for the same exposures on the expiring policy.

Local Government

Fines for overcrowding in residential dwellings. The law increases the maximum fines for repeat violations of ordinances regulating the number of unrelated persons in single-family residential dwellings.

Local governments and local school boards. The law requires local governing bodies and local school boards to annually publish their approved budgets online. If there is no local government website or local school board website, the budgets must be available in hard copy.

Provisions for subdivision of a lot for conveyance to a family member. The law includes stepchildren within the definition of "immediate family" for purposes of family subdivision provisions.

Natural Resources

Apprentice hunting license. The law authorizes the Department of Game and Inland Fisheries to issue an apprentice hunting license. This license would be issued in lieu of the current state resident or nonresident basic hunting license. It is a one-time license that expires two years from the date of purchase and does not require the licensee to complete a hunter education course. The fee for obtaining the license would be \$10 for residents and \$20 for nonresidents.

Commercial dog breeders. The new law defines a commercial dog breeder as any person who,

during any 12-month period, maintains 30 or more adult female dogs for the primary purpose of the sale of their offspring as companion animals. The law would allow state inspectors to inspect what are termed "puppy mills" during normal business hours. Commercial breeders will be required to have a business license, cooperate with inspections by animal control officers to ensure compliance with state and federal animal care laws, maintain records of animal sales, purchases, breeding history, and veterinary care, and dispose of dead dogs and confined waste in accordance with law. Commercial breeders who violate any of these provisions are subject to a penalty of a Class 1 misdemeanor.

Bear hound training. The law allows the training of dogs to hunt bears from one-half hour before sunrise until four and one-half hours after sunset. Currently, the training of dogs to hunt bears is limited to one-half hour before sunrise to one-half hour after sunset.

Identification on traps. The law allows hunters to attach an identification number issued by the Department of Game and Inland Fisheries to traps. Currently, hunters may not set traps without attaching their name and address to the trap.

Hunting and submerged traps. The law authorizes the Board of the Department of Game and Inland Fisheries to adopt regulations that allow certain persons to visit completely submerged, conibear-style, body-gripping traps less frequently than every 24 hours.

Animal protection and fighting. See Courts and Criminal Justice.

Taxes

Refund of certain taxes and fees in Northern Virginia. The Supreme Court of Virginia invalidated certain taxes and fees imposed in Northern Virginia for transportation purposes. Some taxes and fees had already been collected prior to the Court's ruling, and the General Assembly adopted legislation during the 2008 Session establishing procedures for the refund of the taxes and fees.

Sales Tax Holiday. The law adds certain water-efficient products to the sales tax holiday for energy-efficient products. The sales tax holiday for these products takes place during a designated four-day period in October.

School textbooks tax exemption. The law extends the current sales and use tax exemption on sales of school textbooks to students attending nonprofit colleges and other institutions of learning to students attending for-profit institutions of learning.

Repeal and refund of civil remedial fees. See Courts and Criminal Justice.

State earned income tax credit notice. See Health.

Transportation

Wireless telecommunications devices. The law prohibits use of wireless telecommunications devices by persons operating school buses, except in emergencies, or when the vehicle is lawfully parked and for the purposes of dispatching. Use of two-way radio devices authorized by the school bus owner is permitted.

Antique motor vehicles registration. The law eliminates the requirement that owners of antique vehicles applying for registration of their vehicles with DMV certify that their vehicles meet the safety

equipment requirements for the model year in which they were manufactured and that these certifications be notarized.

Local vehicle licenses. The law allows localities to exempt from local vehicle license fees vehicles owned by members and former members of authorized police volunteer citizen support units.

Towing. The law makes several changes to Virginia law on police-requested vehicle tows and exempts certain nonpolice-requested tows from the requirement that they be performed only by persons having tow truck authorization documents. It also provides that applicants cannot be refused a tow truck driver authorization document because of a prior criminal conviction, unless that conviction is related to vehicle towing and safety of towing services users.

Board of Towing and Recovery Operators. The law provides that the chairmanship of the Board of Towing and Recovery Operators will alternate annually between Class A and Class B operators. The law also extends the effective date for Board regulations pertaining to public safety towing and recovery services to July 1, 2010, and the effective date of other Board regulations to January 1, 2009.

Repeal of abuser fees. See Courts and Criminal Justice.

Suspended license and unpaid fines. See Courts and Criminal Justice.

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DMV & Special License Plates

Operation of a Vehicle

Move-over law. The law provides that a motor vehicle approaching a stationary emergency vehicle displaying emergency lights must move to a lane not adjacent to the emergency vehicle regardless of whether the emergency vehicle is in a travel lane.

Mopeds. The law provides that a person who operates a moped in excess of 35 miles per hour will be deemed to be operating a motorcycle.

Child restraints. The law provides escalating penalties for repeat violators of the child restraint law. First time offenders will still be subject to the current civil penalty of \$50, but those convicted of second or subsequent violations on different dates will be subject to a civil penalty of up to \$500.

Special License Plates

Purple Heart recipients. The law eliminates the one-time \$10 surcharge for issuance of Purple Heart special license plates.

National D-Day Memorial Foundation. The law authorizes the Commissioner of the Department of Motor Vehicles to issue revenue-sharing license plates to supporters of the National D-Day Memorial Foundation.

Appalachian Trail. The law authorizes the issuance of revenue-sharing special license plates to supporters of the Appalachian Trail. The annual surcharge for these plates would be \$25, instead of the standard \$10 for most other nonrevenue-sharing special license plates. For each set of plates issued (after the

first 1,000 sets), \$15 will go to the Appalachian Trail Conservancy to support its operation and programs in Virginia.

Colonial Williamsburg Foundation. The law authorizes the issuance of revenue-sharing special license plates for supporters of the Colonial Williamsburg Foundation.

Lake Taylor Transitional Care Hospital Foundation. Authorizes the issuance of revenue-sharing special license plates to supporters of Lake Taylor Transitional Care Hospital Foundation. The annual surcharge for these plates would be \$25, instead of the standard \$10 for most other nonrevenue-sharing special license plates. For each set of plates issued (after the first 1,000 sets), \$15 will go to the Lake Taylor Transitional Care Hospital Foundation to support its operation and programs in Virginia.

Sesquicentennial of the American Civil War. The law authorizes the issuance of special license plates marking the sesquicentennial of the American Civil War. In addition to the prescribed cost of state license plates, these plates will be subject to a one-time surcharge of \$15; \$5 of this \$15 will be paid to the Virginia Sesquicentennial of the American Civil War Commission to support its operation and programs in Virginia. Minimum order requirements, etc., established by § 46.2-725 will not apply to these plates. The authorization expires on July 1, 2015, the same date on which the Commission's mandate expires.

Gold Star family plates. The law eliminates the one-time \$10 surcharge imposed for issuance of the plates for immediate family members of persons who have died in military service to their country.



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