

In Due Course:

2011 Changes to Virginia's Laws

"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



Virginia Division of Legislative Services

This publication provides a brief summary of legislation passed by the 2011 Regular Session of the 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, 2011.

ABC

Consumption of lawfully acquired wine. The law allows restaurants to permit patrons of restaurants to bring their own alcohol that they purchased someplace other than the restaurant itself with them to drink while they eat dinner.

Notice for registered public objections to new licensee applications. The public must now register their objections to new licensee applicants within 30 days of the initial publication of notice that the applicant has applied for a license.

Referendum on mixed beverage sales in counties. The law provides for residents of towns (population +1,000) to now vote on whether or not their county allows the sale of alcohol. The law addresses the situation where a "wet" town is located within a "dry" county, or vice-versa. Before, the residents of towns were not allowed to participate in the county elections, but now they may.

Business & Employment

Benefit corporations. The law authorizes a Virginia stock corporation to elect to be a benefit corporation. A benefit corporation exists not only to increase shareholder profits, but also to create a benefit to the general public. In discharging their duties and considering the best interests of the benefit corporation, the board of directors and individual directors consider the effects of any corporate action on shareholders, employees, customers, and other persons and issues. Directors of a benefit corporation, unlike those of a "regular" corporation, would not be primarily obligated to advance the economic interests of the corporation's shareholders. The law requires benefit corporations to deliver to shareholders, and post on the corporation's website, an annual report describing the ways in which the corporation generally pursued its general public benefit and related matters.

Motor vehicle title loans; nonresidents. The law allows motor vehicle title lenders to make title loans to individuals whose motor vehicle is registered in another state if the lender's security interest

is added to the motor vehicle's certificate of title in compliance with the laws of the state where the motor vehicle is registered.

Purchasers of secondhand metal articles. The law requires any person buying secondhand metal articles used by or belonging to a railroad, telephone, mining, industrial, manufacturing, or public utility company to pay for the articles by check if the cost of the items exceeds \$1,000.

Sales of secondhand building materials. The law allows the chief of police or sheriff to refuse to issue a permit to allow a person to trade in secondhand building materials if the applicant has been convicted of a felony or crime of moral turpitude within three years preceding the application. The law also addresses other issues pertaining to sales of secondhand business materials.

Unemployment compensation; Social Security offset. The law eliminates the requirement that unemployment compensation benefits be reduced by 50 percent of the amount of the claimant's Social Security Act or Railroad Retirement Act retirement benefits in years when the solvency level of the unemployment trust fund is less than 50 percent.

Workers' compensation; farm and horticultural laborers. The law increases, from two to three, the number of full-time farm and horticultural laborers an employer may have in service and remain exempt from requirements of the Workers' Compensation Act.

Workers' compensation; modifications to employee's home and automobile. The law authorizes the Workers' Compensation Commission, in awards entered for incapacity for work, to require the employer to furnish and maintain modifications to or equipment for the injured employee's automobile. The award may be in addition to currently authorized awards for bedside lifts, adjustable beds, and home modifications. The law also increases the maximum aggregate cost of all the items and modifications on account of any one accident from \$25,000 to \$42,000.

Civil Law

Homestead exemptions. This law allows a householder to hold exempt from creditors one firearm, not to exceed

\$3,000 in value, and increases the maximum exemption for a motor vehicle from \$2,000 to \$6,000.

Military parents; delegation of visitation rights. This law allows a court to delegate the visitation rights of a military parent who has been deployed on active duty to a family member.

Protective orders; availability; penalty. This law expands the availability of protective orders by enlarging the types of conduct that permit the issuance of a protective order from certain specified criminal acts to any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. The protective orders are available regardless of the relationship of the parties involved. The law also makes several amendments to make protective orders and family abuse protective orders more consistent, including amending the definition of "family abuse" to be consistent with the conduct that would allow for the issuance of a "protective order" and making the penalties for violating a protective order consistent with the penalties for violating a family abuse protective order.

Recognition of foreign adoptions. This law provides that in certain cases the adoption of a child in a foreign country will be recognized in Virginia and the adoptive parents will not be required to readopt the child. This law also streamlines the process to obtain a certificate of birth for a child adopted in another country and brought into the United States.

Remedies; limitation on recovery in certain medical malpractice actions. This law increases the cap on recovery in medical malpractice actions from \$2 million to \$2.05 million on July 1, 2012. Thereafter, the cap is increased by \$50,000 annually until it reaches \$3 million.

Torts; sexual abuse; limitations period. This law extends the statute of limitations for a tort claim based on the sexual abuse of a minor or incapacitated person from two years to 20 years from the time of the removal of the infancy or incapacity or from the time the cause of action otherwise accrues.

Courts

Jurisdictional limits of courts. This law increases from \$15,000 to \$25,000 the maximum civil jurisdictional limit of general district courts.

Criminal Justice

Bond; GPS tracking. The law allows GPS (Global Positioning System) tracking for persons on secured bond or as a condition of probation or suspended sentence.

Illegal gambling; definitions. The law amends the definition of "illegal gambling" to clarify that the purchase of a product, Internet access, or other thing under certain conditions described in the law shall be deemed as consideration for the purposes of illegal gambling.

Public availability of a search warrant affidavit. The law provides that the affidavit for a search warrant may be made publicly available only after the warrant has been executed or 15 days after issuance of the warrant, whichever is earlier.

Synthetic marijuana. The law outlaws the use of synthetic marijuana, also known as "spice" and "K2." The law makes possession a Class 1 misdemeanor and possession with intent to distribute and manufacturing felonies. The first offender statute applies as it does to marijuana and controlled substances. The law criminalizes privately compounding with the specific intent to circumvent the criminal penalties for synthetic cannabinoids. The law also allows restitution for cleaning up sites where the drug is made and adds chemicals known as "bath salts" to Schedule I of the Drug Control Act. **This law became effective March 23, 2011.**

Education

Cambridge Advanced Exams. The law requires Virginia colleges and universities to develop policies regarding credit for Cambridge Advanced Exams, which are to be comparable to their policies on accepting Advanced Placement exams.

Delayed graduation requirements. This law once again delays implementation of any new graduation requirements for one year, with the exception of the graduation and

completion rate index and the economic and financial literacy requirement.

Virginia Higher Education Opportunity Act of 2011.

This law provides for:

- A new higher education funding policy.
- The calculation of the state general fund share of an institution's basic operations and instruction funding need.
- Per student enrollment-based funding.
- Targeted economic and innovation incentives.
- The creation of a Science, Technology, Engineering, and Mathematics (STEM) Public-Private Partnership.
- The creation of a Higher Education Advisory Committee, which is responsible for development of many of the specific criteria necessary for the implementation of this law.

Elections

Primary schedule in 2011. The law moves the June 14, 2011, primary date to August 23, 2011, in anticipation of the 2011 redistricting process and adjusts various deadlines for filings and election preparations to accommodate the new primary date. The law also authorizes the State Board of Elections to adjust dates and deadlines (other than the primary and election dates) if necessary to complete the Voting Rights Act Section 5 preclearance process. **This law became effective February 17, 2011,** and will expire January 1, 2012.

Energy

Electric utility service terminations; customers with a serious medical condition. The law directs the State Corporation Commission to establish limitations on the authority of electric utilities to cut off electric service to the residence of a customer who has a serious medical condition or resides with a family member with a serious medical condition. The Commission is further directed to adopt regulations, by October 31, 2011, to implement the limitations.

Net energy metering program. For residential customers who qualify to participate in a net energy metering program, the law increases the maximum capacity of an electrical generation facility from 10 to 20 kilowatts. The law also provides that a customer-generator whose generating facility has a capacity that exceeds 10 kilowatts shall pay a monthly standby charge. A supplier's methodology for assessing a standby charge is required to allow the supplier to recover only the portion of its infrastructure costs that are properly associated with serving the eligible customer-generators. The State Corporation Commission is directed to determine the reasonableness of standby charges.

Voluntary Solar Resource Development Fund. The law requires the Department of Mines, Minerals and Energy to provide the option to make voluntary contributions to the Voluntary Solar Resource Development Fund, which is established by this law. Moneys in the Fund will be loaned for projects that involve the acquisition, installation, or operation of photovoltaic devices, solar water heating devices, or certain solar space heating devices at a residence, structure occupied by a nonprofit organization, or commercial establishment. The law expires July 1, 2016.

Environment and Natural Resources

Agriculture; resource management plans. The law allows owners of agricultural land who implement and maintain a resource management plan to be considered as being in full compliance with certain state and federal requirements.

Care of agricultural animals by owner; penalty. The law provides for agricultural animals to have a certain level of care that takes into account their farming activities, including adequate feed, water, and veterinary treatment. The law also clarifies certain procedures for the seizure and impoundment of agricultural animals and allows agricultural animals whose owner has not met the new standards to be sold by a local governing body.

Dam safety; regulation of impoundment structures. Dam owners whose impounding structure is not classified, or whose impounding structure is already classified but the

owner believes that conditions indicate that the hazard potential classification should be reduced, may request that the Department conduct a simplified dam break inundation zone analysis to determine whether the impounding structure has a low hazard potential classification. Dam owners shall pay a fee not to exceed 50 percent of the costs for the services. If the Department finds that the impounding structure has a low hazard potential classification, the owner shall be eligible for coverage under a general permit.

Fertilizer; regulation of application and labeling. The law prohibits the sale, distribution, and use of lawn maintenance fertilizer containing phosphorus beginning December 31, 2013, with certain exceptions. Also, beginning on December 31, 2013, it will be unlawful to offer for sale any deicing agent containing urea, nitrogen, or phosphorus intended for application on parking lots, roadways, and sidewalks, or other paved surfaces. However, retailers are allowed to sell their existing inventory of lawn maintenance fertilizer and deicing agents. The law addresses several other issues related to fertilizer use.

Fishing in interjurisdictional waters. The law clarifies that if a person fishes in interjurisdictional inland waters he is subject to the laws of the jurisdiction in which he is fishing.

Home food inspections. The law exempts a private home whose resident processes and prepares honey produced from hives owned by the resident from inspection by the Commissioner of Agriculture and Consumer Services if certain conditions are met.

Measurement standard for oysters. The law provides that oysters in the shell may be bought or sold by (i) one-half bushel or one bushel metallic containers or (ii) a container of not less than 2,800 cubic inches and not more than 3,000 cubic inches the make and model of which has been approved by the Virginia Marine Resources Commission. Current law prohibits buying or selling oysters in the shell by any measure other than metallic circular tubs with specific dimensions established by law.

Multiple-year licenses. The law authorizes the Board of Game and Inland Fisheries to issue multiple-year hunting,

fishing, or trapping licenses or permits. The costs of these types of licenses cannot exceed the costs of the permits or licenses if they were purchased on an annual basis.

Special combined individual sportfishing licenses; boat license. The law creates an additional boat license option for special combined individual sportfishing licenses, which allows licensees to fish in all the tidal waters of the Commonwealth. The new license would enable the owner of a recreational boat, in any recreational boat he may own, and his passengers, to fish in the tidal waters of the Commonwealth under one combined license. The cost of the license for residents is \$125 and the cost of the license for nonresidents is \$200.

Firearms

Concealed handgun permits; lost or destroyed permits. The law allows a concealed handgun permit holder to obtain a replacement permit in the event that the original permit is lost or destroyed. The permit holder would need to submit a notarized statement to the clerk of the court that the permit was lost or destroyed and pay a fee not to exceed \$5. The clerk would be required to issue a replacement permit within 10 business days. The replacement permit would have the same expiration date as the original permit.

General Laws

Office of the Inspector General. The law establishes the Office of the State Inspector General to be headed by a State Inspector General to investigate complaints alleging fraud, waste, abuse, or corruption by a state agency or nonstate agency or the officers and employees thereof. The new office will consolidate existing offices of inspector general of the Departments of Behavioral Health and Developmental Services, Corrections, Juvenile Justice, and Transportation. **The law will make the office fully operational on July 1, 2012.**

Public Procurement Act; verification of legal presence. The law requires employers with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide

services under the contract to register and participate in the federal E-Verify program to verify information and work authorization of newly hired employees performing work under the contract. An employer who fails to comply will not be eligible to contract with any agency of the Commonwealth for a period up to one year. **This law becomes effective December 1, 2013.**

State and Local Government Conflict of Interests Act; prohibited conduct by constitutional officers. This law prohibits a constitutional officer, during the one year after the termination of his public service, from acting in a representative capacity on behalf of any person or group, for compensation, on any matter before the agency of which he was an officer. The prohibition does not apply to attorneys for the Commonwealth.

Health

Hospitals; DNA sampling of infants. The law requires every hospital providing maternity care to offer to obtain a sample of blood from an infant born at the hospital and provide that sample to the mother of the infant so that the mother may have the sample for purposes of identifying the child at a later date. **This law does not become effective until July 1, 2012.**

Insurance

Health insurance; independent external reviews. The law revises the process for independent external reviews of a health carrier's adverse decision regarding covered health care benefits. An adverse decision is a determination by a managed care health insurance plan that a request for benefit does not meet the plan's requirements or is determined to be experimental or investigational, thereby resulting in a denial, reduction, or termination of the requested benefit. The law expands situations for which an independent external review may be requested. The law tracks the Uniform Health Carrier External Review Model Act prepared by the National Association of Insurance Commissioners. The federal Patient Protection and Affordable Care Act requires states to adopt an external review program by July 1, 2011. The law also requires health carriers to establish an internal appeals process. The law expires July 1, 2014.

Health insurance; mandated coverage for autism spectrum disorder. The law requires health insurers, health care subscription plans, and health maintenance organizations to provide coverage for the diagnosis of autism spectrum disorder (ASD) and treatment for ASD in individuals from age two to six, subject to an annual maximum benefit of \$35,000 of coverage for applied behavior analysis. Treatment for ASD includes applied behavior analysis when provided or supervised by a board certified behavior analyst, who shall be licensed by the Board of Medicine, and the prescribing practitioner is independent of the provider of the applied behavior analysis. The mandate to provide coverage will not apply to individual or small group policies, contracts, or plans. The mandate will apply to the state employees' health insurance plan and to the local choice health program. This measure will not apply to an insurer, corporation, or health maintenance organization, or to government employee programs, if the costs associated with coverage exceed one percent of premiums charged over the experience period. **These new requirements apply to insurance policies when they are delivered, issued, reissued, extended, or amended on or after January 1, 2012.**

Health insurance; market reforms. The law conforms inconsistent and conflicting requirements of Virginia's health insurance laws to corresponding provisions of the federal Patient Protection and Affordable Care Act that became effective on September 23, 2010. The provisions of the federal act that are implemented by these amendments include:

- Requirements that employers offering dependent coverage provide coverage for dependents of employees until they reach age 26.
- Limits on the ability of insurers to impose annual and lifetime dollar limits on essential benefits.
- Limits on rescission of health insurance policies except in cases of fraud or misrepresentation.
- Requirements that nongrandfathered plans cover preventive services without out-of-pocket cost-sharing for the insured.
- Requirements that nongrandfathered plans permit covered persons to designate any participating primary health care professional who is available to

accept the covered person and prohibits the plans from requiring authorization or referral for obstetrical or gynecological care by in-network health care professionals specializing in obstetrics or gynecology.

- Prohibitions on nongrandfathered plans imposing preexisting condition exclusions for enrollees who are under 19 years of age.
- Prohibitions on nongrandfathered plans charging higher cost-sharing for emergency services that are obtained out of a plan's network or from requiring preauthorization for emergency services.

The law expires July 1, 2014.

Life insurance; retained asset accounts. The law requires insurance companies licensed in the Commonwealth that offer retained asset accounts for death benefits to provide the beneficiary, at the time a claim is made, with written information describing the settlement options available under the policy. If the insurer settles benefits through a retained asset account, the insurer shall provide the beneficiary with a supplemental contract that clearly discloses the rights of the beneficiary and the obligations of the insurer under the supplemental contract. The insurer is also required to make certain disclosures regarding retained asset accounts.

Social Services

Child day programs; exemption from licensure requirements. The law provides that a child day program that, with written permission from a parent or guardian, allows school-aged children to enter and leave the premises without permission or supervision shall be exempt from licensure requirements.

Recognition of foreign adoptions. See Civil Law.

Regulation of child day programs; use of outdoor play equipment and areas. The law provides that regulations governing child day centers shall not prohibit child day programs providing care for school-age children at a location that is currently approved for school occupancy and that houses a public or private school during the school year from allowing school-age children to use outdoor play equipment and areas approved for use by students of the school during school hours.

Taxes

Real estate tax relief for the elderly and permanently and totally disabled. The law authorizes local governments to establish annual income or financial worth limitations as a condition of eligibility for real property tax relief for the elderly and permanently and totally disabled. **This law became effective March 24, 2011.**

Real property tax exemption for disabled veterans. The law provides a real property tax exemption for the principal residence of veterans who have a 100 percent, service-related disability. The law was enacted pursuant to a constitutional amendment adopted by voters in November 2010. **The constitutional amendment became effective January 1, 2011, and the law became effective April 6, 2011.**

Sales tax and litter tax; agricultural produce. The law exempts agricultural produce or eggs from the sales and use tax when sold in farmers markets and at roadside stands provided the individual's annual income from the sales does not exceed \$1,000. The law also exempts agricultural produce or eggs from the litter tax when sold in farmers markets and at roadside stands provided the individual's annual income from the sales does not exceed \$1,000 and any container provided by the individual to hold purchased items has been previously used.

Sales tax registration with local commissioners of the revenue. The law allows dealers to register for sales tax purposes with the local commissioner of the revenue, if the commissioner elects to provide the service. Currently, dealers may register only with the Tax Commissioner.

Transportation

Special license plates. The 2011 Regular Session of the Virginia General Assembly authorized the issuance of several new series of special license plates:

- Those bearing the legends DONT TREAD ON ME and IN GOD WE TRUST.
- Those for friends and supporters of the Blue Ridge Parkway and the James River Park System.

- Those marking the bicentennial of the American War of 1812.
- Those celebrating the centennial of Fort Belvoir.

Traffic lights; motorcycles, mopeds, and bicycles. The law allows motorcycles, mopeds, and bicycles, in certain situations, to proceed through intersections controlled by traffic lights showing steady red signals.

Use of HOV lanes. The 2011 Regular Session extended for another year authorization for motor vehicles bearing "clean special fuel vehicle" license plates to use HOV-lanes, regardless of the number of their passengers.

Veterans

Secretary of Veterans Affairs and Homeland Security. The law establishes the Secretary of Veterans Affairs and Homeland Security as a cabinet level position that will be responsible to the Governor for veterans services and homeland preparedness and security. **This law became effective April 6, 2011.**

Complete information on all actions of the General Assembly is available on the

Internet at:

<http://legis.virginia.gov>

Click on *Session Tracking* for a complete array of menu choices for selecting bill summaries or complete bill text for all legislation considered during the 2011 Regular Session.

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