

2002 SESSION HIGHLIGHTS



Session Highlights is designed to provide legislators with a list of significant legislation considered by the 2002 General Assembly, as selected by the staff of the Division of Legislative Services. This brief overview of the Session covers Assembly actions through the Reconvened Session on April 17, 2002.

Abortion

Vetoed

Medically induced infanticide. Creates a Class 4 felony for any person to deliberately and intentionally deliver a living fetus or a substantial portion thereof into the vagina for the purpose of performing a procedure such person knows will directly kill the fetus, perform the procedure, kill the fetus and complete the delivery.

Failed

Parental consent. Requires a physician to obtain parental consent prior to performing an abortion on an unemancipated minor. Currently, the minor's parents must be notified of the abortion, but do not have to give consent.

Physicians performing abortions. Requires, prior to performing any abortion in Virginia, any physician to have practice privileges in a hospital or valid, unexpired or uncanceled malpractice liability insurance for at least \$2 million. The Board of Medicine is required to monitor and verify these requirements and the physician will be required to report any lawsuit filed against him regardless of the outcome of the action.

Licensure and regulation of abortion clinics. Requires the Board and Department of Health to license as abortion clinics any facility, other than a hospital as defined in the law, in which any second trimester or five or more first trimester abortions per month are performed. Each facility so licensed will be required to comply with requirements relating to facility safety and patient protection, including cleanliness, sterilization, fire protection, evacuation, staff credentials, equipment, maintenance of facilities and equipment, allowable procedures, and facility procedures and policies.

Commerce

Passed

"Payday loans." Caps the fee that a payday lender may charge at \$15 per \$100 advanced to the borrower. The minimum term of a payday

loan is set at 7 days. Lenders are prohibited from renewing or "rolling over" such loans. Payday lenders are required to be licensed with the State Corporation Commission. A violation of the measure is a prohibited practice under the Consumer Protection Act. Violators are subject to civil and criminal penalties. Making unlicensed loans, or arranging or brokering payday loans, is punishable as a Class 6 felony.

Telecommunications services. Provides that any certificate for local exchange service or interexchange service granted by the SCC after July 1, 2002, shall be for service throughout the Commonwealth. Each local exchange carrier that was certificated before July 1, 2002, to provide service in part of the Commonwealth shall be certificated to provide local exchange service throughout the Commonwealth beginning September 1, 2002. The bill authorizes any county, city or town that operates an electric distribution system to provide telephone services within any locality in which it has electric distribution system facilities as of March 1, 2002, if the locality obtains a certificate for such service from the SCC and complies with all applicable laws and regulations for the provision of competitive telecommunications services. A county, city or town that does not obtain a certificate to provide telephone services may offer qualifying telecommunications services, including high-speed data service and Internet access service, upon application to the SCC. The SCC shall approve such a petition if it is in the public interest, and if the proposed services are not available in quantity, quality, and price from three or more providers in the proposed geographic area.

Failed

Below-cost gasoline. Prohibits a person who sells motor fuel at a retail outlet in Virginia from selling such fuel below cost unless the sale is (i) made in good faith to meet competition, (ii) an isolated and inadvertent sale, (iii) a bona fide clearance sale for the purpose of discontinuing trade in such motor fuel, (iv) a final business liquidation sale, (v) of the refiner's motor fuel by a fiduciary or other officer under the order or direction of any court, or (vi) made during a grand opening to introduce a new or remodeled business. Any person found by the Commissioner of the Department of Motor Ve-

hicles to be in violation shall be subject to a civil penalty of \$5,000 for the first offense and \$10,000 for each violation thereafter.

Constitutional Amendments

The following proposed amendments will appear on the ballot at the November 2002 election for voter approval:

Claims of actual innocence. Provides that the Supreme Court may consider, as part of its original jurisdiction, claims of actual innocence presented by convicted felons in the cases and manner provided by the General Assembly.

Property tax exemptions. Allows local governing bodies to grant tax exemptions for property used for charitable and certain other purposes by local ordinance subject to restrictions and conditions as provided by general law enacted by the General Assembly. The present Constitution allows the General Assembly to exempt such property by classification or by designation by a three-fourths vote in each house.

The following proposed amendments were carried over until the 2003 Session:

Governor's term of office. Permits the Governor to succeed himself in office. The amendment allows two terms (either in succession or not in succession), but prohibits election to a third term, and allows Governors elected in 2005 and thereafter to serve two successive terms.

Taxation of certain motor vehicles. Exempts motor vehicles used for nonbusiness purposes from the property tax and provides that general law shall provide for at least 15 percent of the state individual income tax to be distributed to local governments.

Restoration of civil rights for felons. Authorizes the General Assembly to provide by law, or establish a process by law, for the restoration of civil rights for felons who have completed service of sentence, probation, and parole and met such other conditions or limitations as may be prescribed by law.

Authorization to grant certain taxing powers to school boards. Authorizes the General Assembly, by general law or special act, to grant one or more elected school boards the power to impose real estate taxes and appropriate the funds derived from the taxes for the educational program of the district. The present Constitution in Article VII, Section 7, states that taxes are imposed by an ordinance or resolution adopted by the local governing body and has been construed to prevent the granting of taxing powers to local school boards.

Courts

Passed

Domestic violence. Creates a statewide facilitator for victims of domestic violence within the Office of the Attorney General. The bill also redefines family abuse to include reasonable apprehension of any bodily injury rather than serious bodily injury as under current law; requires that law-enforcement agencies enter information on protective orders into the VCIN immediately upon receipt; removes the provision that marital rape cannot occur unless the spouses were living apart or there was bodily injury caused by force or violence; and creates a protective order registry within the State Police to be made available to all criminal justice agencies in the Commonwealth.

Terrorism. Broadens Virginia's capabilities to respond to terrorism. The bill defines terrorism; makes murder in the furtherance of terrorism a capital crime; and punishes committing, aiding and abetting terrorism, manufacture and possession of terrorist and hoax devices and making terrorist threats. The bill expands wiretap capabilities in response to terrorist activity and restricts admission to bail of a person charged with a terroristic crime. The bill also expands seizure and forfeiture law to include property associated with terrorism.

DNA samples. Requires that every person arrested for a violent felony submit a blood, saliva or tissue sample for DNA analysis. The sample would be destroyed upon acquittal or dismissal of the case.

Aggressive drivers. Creates the new offense of aggressive driving, which is punishable as a Class 2 misdemeanor; however, if committed with intent it is punishable as a Class 1 misdemeanor. In addition, the court may require successful completion of an aggressive driving program.

Failed

Death penalty—abolish. Abolishes the death penalty for Class 1 felonies committed on or after July 1, 2002, and mandates the punishment upon conviction as life imprisonment without the possibility of parole. The bill does not affect anyone who was convicted of or committed a Class 1 felony prior to the effective date of the bill.

Death penalty—moratorium. Provides that the State shall not conduct executions of prisoners

sentenced to death. All other matters of law relating to the death penalty, such as bringing and trying capital charges, sentencing proceedings, appeals and habeas review are not affected by the bill.

Carried Over

Death penalty—mentally retarded persons. Prohibits the imposition of the death penalty on mentally retarded persons.

Feticide. Provides that it is a Class 4 felony if any person willfully and deliberately terminates the life of a fetus by serious bodily injury to the mother, knowing or having reason to know the woman is pregnant.

Racial profiling. Requires the Superintendent of State Police to require each local and state police officer, during the course of his official duties, to collect certain information pertaining to traffic stops, including the race, ethnicity, color, age and gender of the alleged traffic offender, and to record the specific reason for the stop, whether the person was interrogated, charged or arrested, and whether a written citation or warning was issued. Police officers must indicate the specific traffic violation committed.

Education

Passed

Standards of Quality revisions. Requires the Board of Education to exercise its constitutional authority to determine and prescribe the standards, subject to revision only by the General Assembly, by (i) reviewing the standards and (ii) either proposing amendments to the standards or (iii) making a determination that no changes are necessary. In any odd-numbered year in which the Board proposes changes to the standards of quality, the budget estimates that are statutory required to be reported pursuant to § 2.2-1504 must take into consideration the Board's proposed standards of quality.

Standards of Quality; guidance counselors. Amends the Standards of Quality to require, within the Standards of Accreditation, guidance counselors in elementary schools at the following staffing levels: one hour per day per 100 students, one full-time at 500 students, and one hour per day additional time per 100 students or major fraction thereof.

Charter schools. Clarifies that institutions of higher education may submit applications to form charter schools, requires all school boards to accept and review public charter school applications, and requires the reporting of the average daily membership of any charter school in the fall membership for purposes of calculating the state and local shares for the Standards of Quality.

Charter schools. Modifies the charter schools statutes by requiring the Board of Education to add the number of charters denied to its annual report to the Governor and the General Assembly and to clarify that the charter school and its governing body are entitled to immunity "to the same extent as a

public school and its school board" and its employees and volunteers to such immunity "to the same extent as the employees and volunteers in a public school."

National motto. Requires all school boards to post the statement, "In God We Trust," the National Motto, enacted by Congress in 1956 prominently and conspicuously in each public school. Other measures permit the display of the motto in courtrooms and local government buildings.

Failed

School opening. Allows local school divisions to set their own calendars and open before Labor Day.

"Transcendent values in historical texts." Requires the Board of Education, in consultation with the Office of the Attorney General, to develop guidelines regarding the display in the public schools of posters depicting together the Ten Commandments, the first sentence of the second paragraph of the Declaration of Independence, the first two clauses of Article I, Section 16 of the Constitution of Virginia and the First Amendment to the Constitution of the United States. Local school boards may authorize the display of such posters in a manner consistent with such guidelines.

Elections

Passed

"Stand By Your Ad." Requires that print, television, and radio advertisements supporting or opposing the nomination or election of clearly identified candidates contain specific information regarding the sponsor of the advertisement.

Failed

Primaries for statewide offices. Requires that political party candidates for the offices of Governor, Lieutenant Governor, and Attorney General be nominated by a statewide primary.

Voting materials in languages other than English. The State Board of Elections may prescribe voting materials in a language other than English to comply with federal law in localities with large Hispanic and Asian populations.

Carried Over

Felons' voting rights. Revises the procedure for seeking restoration of voting rights through a petition to the circuit court by eliminating the requirement that the petitioner wait five or more years after completion of sentence, probation, and parole before filing the petition.

Virginia Clean Election Act and Fund. Establishes an alternative, publicly financed, campaign financing option for candidates for Governor, Lieutenant Governor, and Attorney General. A candidate may volunteer to participate and be certified for public funds after a qualifying pro-

cess. A participating candidate may not accept or spend private contributions and must abide by the campaign contribution and spending restrictions set out in the act. The bill establishes the Virginia Clean Election Commission to administer the act and fund. The bill sets a contribution limitation of \$500 for elections for Governor, Lieutenant Governor and Attorney General.

Campaign Finance Disclosure Act. Provides that (i) the State Board of Elections shall review the campaign finance reports of candidates for Governor, Lieutenant Governor, Attorney General and 10 percent of the candidates for the General Assembly selected at random; (ii) the review shall be for the purposes of (a) reconciling the balance in the campaign depository with the amounts reported in the candidate's reports of receipts and expenditures and (b) reviewing the reports for mathematical accuracy and facial completeness including the reporting of specific information required by law; (iii) the Board shall meet publicly to select on a random basis by a drawing the General Assembly candidate campaigns to review; (iv) a campaign committee shall be exempt from review if it has received less than \$25,000 in contributions; and (v) the campaign treasurer shall retain, and provide on request by the Board, the bank statements and copies of checks issued on campaign depositories and receipts for campaign fund expenditures greater than \$500. The bill will take effect January 1, 2004.

Run-off primaries. Authorizes a run-off primary if the candidate winning the first primary has not received at least 40 percent of the vote cast for the office. The candidate receiving the next highest number of votes may call for a second primary to be held on the fourth Tuesday following the first primary. Only the candidates receiving the highest and next highest number of votes in the first primary will have their names printed on the ballot for the run-off primary.

Environment

Passed

Waste and water permit fees. Directs the Virginia Waste Management Board to develop new permit fee schedules sufficient to cover no more than 20 percent of the direct costs of the hazardous and solid waste programs, using as the base the amounts allocated to these programs in the 2002 Appropriation Act; however, no individual permit could increase more than 300 percent. The bill also triples the statutory caps on water permit fees. There is a July 1, 2004, sunset on the new fee structure.

Permits for power plants. Provides that any valid permit or approval required for an electric generating plant and associated facilities issued or granted by federal, state, and local governmental entities charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation

plans and public safety, shall be deemed to satisfy requirements for SCC consideration of the effect of the facility on the environment with respect to matters that are governed by the permit or approval or are within the authority of and were considered in the issuance of the permit or approval. The measure also grants to the DEQ and the Air Pollution Control Board the authority to consider the cumulative impact of new and proposed electric generating facilities on attainment of national ambient air quality standards. The SCC and DEQ are also required to enter into a memorandum of agreement to govern their coordination of reviews of the environmental impacts of such facilities.

Sewage sludge. Places the responsibility for regulating the spreading of sewage sludge on farm fields solely with the Department of Environmental Quality. The bill must be reenacted by the 2003 General Assembly.

Brownfield Restoration and Land Renewal Act. Consolidates and reorganizes existing provisions related to brownfields restoration in order to simplify public access to this information and facilitate their use. The act contains specific liability protections for bona fide prospective purchasers, innocent landowners, and adjacent landowners. These provisions track those provided in the federal act. The bill also creates the Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund, to be administered by the Virginia Resources Authority, which will consist of moneys appropriated to it by the General Assembly and such other sums as may be made available to it from any other sources. Local governments are eligible to receive grants and loans from the fund, and business may receive loans for the purposes of promoting the restoration and redevelopment of brownfield sites and to address environmental problems or obstacles to reuse so that these sites can be effectively marketed to new economic development prospects.

Carried Over

Sewage sludge. Provides authority for localities to enact ordinances that prohibit, restrict, or regulate the land application of sewage sludge. Allows for the collection of local fees to cover testing and monitoring costs. Removes certain provisions requiring the Board of Health to adopt regulations concerning the payment, collection, and disbursement of sludge land application permit fees by the Department of Health.

Health

Passed

Reporting dangerous microbes and pathogens. Requires laboratories in the Commonwealth to report their inventories and changes of inventories of dangerous microbes and pathogens to the State Department of Health. The laboratories must also immediately report inventory that cannot be accounted for within 24 hours. The Board of Health will determine the list of dangerous microbes and pathogens to be reported and the manner of such reporting.

Prescription Monitoring Program. Requires the Director of the Department of Health Professions to establish the program, which will require reports to the department from dispensers of certain drugs (to be called "covered substances") that will include detailed information on the recipient of the prescription and the drug prescribed. The covered substances will include all Schedule II controlled substances as defined in the Drug Control Act. The bill generally affects pharmacists, prescribers, and others who legally dispense drugs, but the information must be disclosed only in cases of specific investigations by the State Police, allegations of misconduct by a prescriber or dispenser, or proceedings of a grand jury.

Board of Medicine regulations. Requires the Board of Medicine to promulgate regulations governing the practice of medicine related to the administration of anesthesia in physicians' offices.

Failed

Emergency contraceptives. Establishes procedures by which a physician, in accordance with a protocol developed by the Board of Medicine, may authorize a licensed pharmacist to dispense emergency contraception to women. Pharmacists may dispense such emergency contraception according to regulations adopted by the Board of Pharmacy. This is similar to current law that allows a practitioner to permit pharmacies to dispense immunizations even to persons who are not patients of the physician who initiates the authorization. The bill also provides that nurse practitioners, physician assistants, and physicians may dispense emergency contraceptives at any time according to procedures developed by the Board.

Certificate of public need. Removes "cancer care centers" from the requirement to obtain a certificate prior to construction of the facility, purchase of major medical equipment, or introduction of new covered services. "Cancer care center" is defined as any specialized center or clinic or portion of a physician's office developed for the provision of outpatient chemotherapy, radiation, and diagnostic radiology services that does not administer general anesthesia in connection with such services. This exemption is conditioned on the provision of care to patients regardless of ability to pay and on reporting on indigent care to the Department of Medical Assistance Services.

Carried Over

Virginia Birth-Related Neurological Injury Compensation Act. Transfers jurisdiction to determine eligibility and make awards regarding birth-related neurological injuries from the Workers' Compensation Commission to circuit courts. The board of directors of the Birth-Related Neurological Injury Compensation Program is eliminated, and management of the Compensation Fund is transferred to the Virginia Retirement System. Participation in the program by

physicians and hospitals is mandatory, and failure to pay assessments will waive liability limits currently applicable to medical malpractice claims. Also provides that the act does not deprive a parent of the right to bring a wrongful death action if a child who would be eligible for benefits under the program dies shortly after birth.

Mental Health

Passed

Independent agency. The Department for Rights of Virginians with Disabilities is removed from the executive branch and becomes an independent state agency, renamed the Virginia Office for Protection and Advocacy, with an 11-member governing board appointed by the Governor and the General Assembly for staggered terms. The Office is given the authority to access facilities and programs, receive notification of deaths in state facilities and protect the confidentiality of records. The Office will also monitor compliance with human rights regulations and make the reports available to the public. The bill establishes within the Office an ombudsman program and creates the Protection and Advocacy Fund.

Restructuring of mental health care system. Provides that for any restructuring of the system of mental health services involving an existing state mental health facility, the Commissioner shall establish a state and community consensus and planning team. Each team shall develop a plan that addresses (i) the types, amounts, and locations of new and expanded community services that would be needed; (ii) the development of a detailed implementation plan designed to build community mental health infrastructure for current and future capacity needs; (iii) the creation of new and enhanced community services; (iv) the transition of state facility patients to community services in the locality of their residence prior to institutionalization or the locality of their choice; (v) the resolution of issues relating to the restructuring implementation process, including employment issues related to state facility employee transition planning and appropriate transitional benefits; and (vi) a six-year projection comparing the cost of the current structure and the proposed structure.

State Government

Carried Over

State Corporation Commission membership. Increases the number of members of the SCC from three to five, effective February 1, 2003.

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Retirement benefits. The average final compensation for state employees who retire on or before December 1, 2003 is adjusted upwards by a percentage depending on the employee's retirement date.

Taxation

Passed

Sales tax referendum—Hampton Roads. Authorizes a referendum in which Hampton Roads voters have the opportunity to approve a one-cent increase in the sales tax to fund transportation needs. The tax would apply in the Counties of Isle of Wight, James City, and York and the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

Sales tax referendum—Northern Virginia. Authorizes a referendum in the Eighth Planning District in which Northern Virginia voters have the opportunity to approve a half-cent increase in the sales tax to fund transportation needs.

Failed

Sales tax referendum—Winchester. Authorizes a referendum in which Winchester voters have the opportunity to approve a one-cent increase in the sales tax to fund education needs.

Sales tax referendum—statewide. Authorizes a statewide referendum to increase the sales tax by one-half cent, with the resulting revenues to be used for education.

Transportation

Passed

Driver's licenses and the draft. Requires that every male applicant for a driver's license who is less than 26 years old must be registered with the Selective Service. The data pertaining to any person less than 18 years old will not be used by Selective Service to register him until he turns 18.

Driver's licenses. Requires applicants for driver's licenses and special identification cards to submit proof of their name, date of birth, Virginia residency, and either U.S. citizenship or lawful presence in the United States. The bill does not apply to renewals, only to first-time issues.

Cooperation with federal agencies. The Department of Motor Vehicles and the Department of State Police are authorized to exchange with one another and with the United States Department of State, the Immigration and Naturalization Service, and other federal law-enforcement agencies such data and other information (i) to ensure that persons who hold or apply for driver's licenses are lawfully entitled to do so and (ii) to facilitate the detection and prevention of criminal activity and the identification and apprehension of persons engaged in criminal activity.

"Four-for-life." Increases, effective July 1, 2002, from two dollars per year to four dollars per year the

motor vehicle registration surcharge used to support emergency medical services.

Child restraint devices. Increases the maximum age of children that must be secured in child restraint devices when traveling in motor vehicles and allows restraining a child who is at least four but less than six years old with a standard seat belt instead of a child restraint device, if the weight and size of the child make the use of a seat belt practical and the use of an approved child restraint impractical.

Vehicle inspection fees. Increases the cap on motor vehicle safety inspection fees for passenger cars and pickup or panel trucks from \$10 to \$15 and increases the cap on emission inspection fees from \$20 to \$28.

Open containers. Creates a rebuttable presumption that the driver has consumed an alcoholic beverage in violation of § 18.2-323.1 if (i) an open container is located in the passenger area of a motor vehicle, (ii) the alcoholic beverage has been at least partially removed and (iii) the appearance, conduct, odor of alcohol, speech or other physical characteristic of the driver may be reasonably associated with the consumption of an alcoholic beverage. A violation of § 18.2-323.1 is punishable as a Class 4 misdemeanor.

Failed

"Photo-red." Adds several localities to the list of those authorized to monitor traffic signals with cameras and to prosecute offenders based on photographs.

Special license plates. Creates a Joint Commission on Special License Plates to review and make recommendations concerning legislative proposals for authorizing the issuance of special license plates.

Unemployment

Passed

Weekly benefit amount. Increases the weekly benefit amount for recipients of unemployment compensation by 37.3 percent for claims filed between September 9, 2001, and January 1, 2003, and by 18.65 percent for claims filed between January 1, 2003, and January 1, 2004. After that date, benefit amounts will revert to levels in effect prior to September 9, 2001.

Failed

Waiting week. Eliminates the requirement that applicants for unemployment benefits wait one week prior to receiving benefits.

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