



2011 Legislative Summary

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A snapshot of the Virginia Poverty Law Center's work during the General Assembly Session

Consumer Law

Sales of cars damaged by water—Delegates Hugo and Abbott and Senator Newman (HB 1412) § 46.2-624. This legislation is the result of a compromise reached between consumer advocates, car dealers and insurance companies. If water damage is \$3,500 or more, it must be noted on the car's title.

No change to the duty of a seller of a vehicle to report damage to a buyer under common law fraud and the Virginia Consumer Protection Act.

Motor vehicle title loans; loans to nonresidents—Senator Saslaw (SB 1367) §§ 6.2-2201, 6.2-2215, and 6.2-2225. Eliminates provisions that prevent motor vehicle title lenders from making title loans to individuals whose motor vehicle is registered in another state.

This Bill was narrowly passed after a big effort by VPLC and our coalition partners to defeat it.

Domestic and Sexual Violence

Family Abuse and Acts of Violence Protective Orders—Delegate Bell (HB 2063) and Senator Barker (SB 1222). Historic and comprehen-

sive improvements to the protective order statutes, especially for victims of domestic and sexual violence who do not meet the definition of family/household member (under § 16.1-228):

New definition of Family Abuse (under § 16.1-228): "Family Abuse" means 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* and *that* is committed by a person against such person's family or household member. *Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§18.2-61 et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault or bodily injury.*

Elder Law

Nursing Homes Required to Send Notices and Information about Family Councils—Senator Whipple (SB 976) and Delegate Hope (HB 2388) (and Torian for HB2388). Adds section 16 to § 32.1-127.B to require the Health Department to require nursing homes and certified nursing facili-

ties, upon the request of the facility's family council, to send notices and information about the family council, developed by the family council and the administration, to the responsible party or a contact person of the resident's choice up to six times a year. Notices can be included in regular billing statements or other regular communication. Notices and information shall also be posted in a designated location with the nursing home.

Foreclosure Law

Notice to tenant in event of foreclosure—Senator Barker (SB1220) § 55-225.10. Provides tenants with the right to terminate a rental agreement with five days' written notice to the landlord if the landlord fails to provide notice to the tenant of a mortgage default, mortgage acceleration or foreclosure sale within five business days after written notice from the lender is received by the landlord. Requires landlords to disclose in writing to any prospective tenant whether he's received any notice of mortgage default, mortgage acceleration or foreclosure sale relative to the loan on the dwelling unit.

Several other foreclosure bills failed this session and were sent to the Governor's Foreclosure Taskforce to study the issue further and then make a recommendation.

Foster Care

Elimination of "Independent Living" as a Permanency Goal—

Senator Barker (SB1037). This bill eliminates "Transition to Independent Living" as a permanency goal for teenagers in foster care. Under current law, youth in foster care can be given the goal of Transition to Independent Living if they are 16 years or older, and once they are given that goal their caseworkers are no longer obligated to try to find an adoptive family or suitable relative placements for these youth. When the new law becomes effective July 1, teens in foster care will continue to have true permanency goals, such as adoption or living with a relative, as long as they are in foster care.

Educational Rights of Youth in Foster Care—Senator Barker

(SB1038). This bill puts the joint VDSS/VDOE policy and directive of the federal Fostering Connections to Success Act into state code. The new law requires that: 1. The foster care plan for a school-aged child to describe the child's school placement in writing; 2. Children in foster care be allowed to continue to attend the school they were in prior to the most recent foster care placement if the local school division and local DSS agree that remaining in that school is in the child's best interest; and 3. Local school divisions and local DSS

agencies jointly determine in writing whether it's best for the child to remain in the school he was in prior to his most recent foster care placement.

Planning for foster youth released from the Department of Juvenile Justice—Delegate Peace (HB2036) and Senator Marsden (SB1170).

This bill requires the Department of Juvenile Justice to consult with the local department of social services 90 days prior to the release of a youth who was in DSS custody before his commitment to DSS. Current law requires this consultation four weeks before the youth's release. The bill also requires DJJ and the local department of social services to collaborate on the development of a plan to prepare youth released to DSS for a successful transition back into foster care or into other appropriate custodial arrangements.

Rental Housing

Tenant's Assertion—Senator Locke (SB 829). This bill adds to the Landlord and Tenant Act a remedy for tenants whose landlords are not promptly making necessary repairs by creating a new section (§55-224.11). The bill also adds to the Landlord and Tenant Act the right of a tenant to terminate a lease agreement if the landlord commits a material, non-remediable breach after receiving written notice of the same from the tenant by creating a new section (§55-225.12). These new sections mirror remedies that already exist in the Virginia Residential Landlord Tenant Act, so that all tenants have access to the same remedies regardless of whether

their tenancies are covered by the VRLTA, which generally applies only to multi-family housing.

Unemployment Insurance

Social Security Offset—Senator Watkins (SB 1113) and Delegate McClellan (HB 2357). Eliminates the social security offset rule, under which an individual's unemployment compensation benefits are reduced by an amount equaling 50 percent of his/her Social Security (or Railroad Retirement Act) benefits when the solvency of the unemployment trust fund is less than 50 percent.

Utility Shut Off Protection

Termination of Electric Utility Services of Seriously Ill Consumers—

Senator Roscoe Reynolds (SB1165) and Delegate Iaquinto (HB2159). Requires the State Corporation Commission to develop policy and promulgate regulations by October 31, 2011 establishing protections against electricity shut-off for non-payment for consumers who provide certification from a physician that a member of their household has a serious medical condition.

Health Care and HHR Budget Highlights

Eligibility Expansion Efforts Were Not Successful

- SB 978 to raise FAMIS eligibility from 200% to 225% FPL – not funded
- HB 2192 to provide Medicaid coverage to legal immigrant pregnant women during the first 5 years - not funded
- SB 1464 to provide Medicaid to otherwise eligible legal immigrants after 5 year bar without restrictions – not funded.
- Other budget amendments which would have extended coverage to legal immigrants who are FAMIS eligible children and pregnant women were also not funded.

Most Provider Cuts Restored

- Nearly all the Medicaid and FAMIS provider payment cuts which were scheduled to take effect in July 2011 were avoided. Specifically, the planned 4% cuts to physicians and dentists will not take effect. Nearly all the cuts to hospitals and nursing homes were also avoided.

Medicaid Services

- Budget language expands Medicaid managed care and care-coordination programs.
- Restores podiatry services.

Children’s Mental Health

- Restores funding for Comprehensive Service Act (CSA) non-

mandated children and therapeutic foster care. The conferees impose new preauthorization and utilization controls on CSA services, but (wisely) decided not to adopt the House proposal which would have shifted thousands of Medicaid children who need mental health services into the CSA program, imposing major administrative problems and shifting major costs to localities. But Governor recommends taking out \$\$ for therapeutic foster care.

- HB 2467 – SB 1062 – Narrow mandate for autism coverage adopted, with some limitations added by the Governor.

Community Based Care

- \$30 million to establish a Behavioral Health Trust Fund which will be used to transition intellectually and developmentally disabled individuals from institutional care to community-based settings in an effort to address the findings of the U.S. Department of Justice that Virginia is inappropriately treating many individuals in institutions.

- The budget also funds 275 Intellectual Disability Waiver slots and 150 Developmentally Disabled Waiver slots to help these individuals reside in community settings.

- Partially restored Respite Care Cut—the proposed Budget cut Respite Care hours from 720 to 240 annually; The adopted

budget supports 480 hours/year (still reduced from 720 annually).

- Cap on Personal Care Hours for certain Waivers—the House proposed a 40 hour/week cap; The adopted budget caps community-based services at 56 hours/week for Alzheimer’s Assisted Living, Elderly & Disabled Consumer Directed, and HIV/AIDS waivers (the cap does not apply to ID, DD and Tech Waivers). Language also provides for individual exceptions for those who need more than 56 hours/week using criteria based on dependencies in ADLs, level of care, and risk of institutionalization if additional hours are not provided. DMAS will promulgate emergency regulations.

- Restores funding for environmental modifications and assistive technology for waiver recipients (which had been reduced from \$5000 to \$3000).

Electronic health records and exchanges

- \$4.6 million to connect health systems to the health information exchange (HIE), to ensure that providers can implement technology needed to produce and use electronic health records (EHRs), establish a web-based portal for determining eligibility for Medicaid applications, and pay for Medicaid participation in the HIE.

Advocating for low-income Virginians for over 30 years

- \$20 million to implement the Medicaid incentive program for adoption of EHRs. Initial incentive payments to providers will be made in fiscal year 2012, which starts July 1, 2011.
- Mandated electronic claims submission and payment, which will require claims submissions and provider payments to be processed electronically as a condition of participation in Medicaid and FAMIS. New providers will be required to follow these new provisions beginning Oct. 1, 2011, followed by an expansion to all existing providers by July 1, 2012. A process to exempt providers from this mandate, if necessary, may be created.
- HB 1928 and HB 1958 - to bring the Virginia Code into compliance with the new private health insurance reforms already in effect (e.g. coverage for children up to age 26, no preexisting condition restrictions for children under age 19, no lifetime limits, reduced annual limits, restrictions on rescissions, and new appeal processes for insurance denials).
- HB 2434 also authorizes Virginia to implement its own Health Benefits Exchange in 2014. The Governor's amendments limit coverage of abortions in exchange products.

Medical Malpractice

- HB 1459 – SB 771 – Negotiated solution increases cap over 20 year. The legislature overrode the Governor's veto.

Health Reform

- The budget provides \$250,000 to support the Office of Health Care Reform under the leadership of Secretary of Health and Human Resources William A. Hazel Jr., M.D. to coordinate the planning and implementation of state and federal reform efforts.