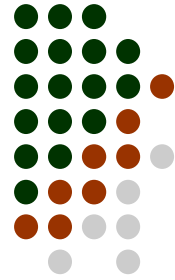




Virginia Poverty Law Review



Minimum Wage Increase Won't Decrease Benefits

By Jill Hanken & Ty Jones, Virginia Poverty Law Center

Some have questioned whether raising the minimum wage would actually hurt working poor Virginians because they might lose public assistance benefits. We have done the specific eligibility calculations -- and the answer is no.

A full-time minimum wage worker would earn about \$230 more each month if Virginia's minimum wage was raised from \$5.15 to \$6.50 per hour. This higher income would not jeopardize public assistance received by the family, even with both parents earning the

minimum wage. Children would still qualify for Medicaid or Family Access to Medical Insurance Security (FAMIS) health insurance. For those already participating in the Temporary Assistance for Needy Families (TANF) work program, assistance would continue. Any reduction in food stamps would be offset by much more disposable income. Families would still be considered eligible for school meal programs and public or subsidized housing.

There are limited government services available to the working poor in Virginia, but increasing the minimum wage would not take

away that safety net. With higher income, these families could become more self-sufficient and improve their quality of life.

We applaud the legislature's increase in the state's income tax thresholds. But raising the minimum wage would be a greater showing of support for the working poor in Virginia.

Cleaning Up a Consumer Lending Mess

By Christopher Peterson University of Florida

WHEN THE CEO of HSBC, one of the world's largest banks, and legal aid attorneys who represent poverty-stricken Americans find something to agree on, it is no small event. Recently, CEO Michael Geoghegan explained that massive losses in HSBC's home mortgage lending business were caused by

the mistake of "going for volume." The nation's legal aid attorneys have a different description. They call it predatory lending. Investors forget that for every "bad" loan in their portfolio, there is a family facing foreclosure on the other end. Indeed, last month Massachusetts broke an all-time record with lenders notifying 2,207 families of impending foreclosure -- nearly double this time

last year.

HSBC and other players in the risky subprime mortgage business forgot their loans must eventually be repaid. Now these companies are slashing employees, folding up branches, and going out of business. Financial analysts describe this process as a "weakening" in the market that provides

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- Consumer Law—Jay Speer, Jay@vplc.org
- Elder Law—Kathy Pryor, Kathy@vplc.org
- Health Law—Jill Hanken, Jill@vplc.org
- Housing Law—Jim Naggles, Jim@vplc.org
- Immigration Rights/Multiculturalism—Cristina Rebeil, Cristina@vplc.org
- Family Law—Christie Marra, Christie@vplc.org
- Public Benefits Law—Ty Jones, Ty@vplc.org

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Cleaning Up a Consumer Lending Mess

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home equity and refinance loans to risky borrowers. This is just a polite way of saying that lenders got too greedy.

More than 30 states have passed some form of legislation attempting to discourage a variety of harsh mortgage terms such as inflated closing costs, penalty interest rates, prepayment penalties, balloon payments, broker kickbacks, and garbage credit insurance policies. Although well-intentioned, these statutes are frequently riddled with exceptions and loopholes, and—at least according to banking industry lawyers – do not apply to banks with federal charters, like HSBC.

No doubt much of the bout of pain in mortgage lending is due to the slowdown in real estate sales. As home prices have stagnated, lenders can no longer refinance bad loans with closing costs paid out of home equity created through appreciation in home values. But it is not like the slowdown in the real estate market should have surprised anyone – especially mortgage lenders.

Poor performance in subprime mortgages is also linked to structural changes in the mortgage business. To see the change, policy makers should no longer picture

subprime creditors as "lending" their own money. Rather, these businesses have become loan manufacturers. They produce loans for a fee, repackage them into large trusts, and then sell income from those trusts to investors. In one way or another, the individuals on the front lines of the subprime mortgage lending are compensated by commissions earned from volume rather than loan performance.

In the worst cases, businesses that sold ill-advised loans to investors were paid long ago, and now can declare bankruptcy, leaving investors with not only losses, but thousands of potential lawsuits filed by families who are learning their loans may have been illegal from the beginning. It is time to re think national credit policies. Leaders should learn at least three lessons from the latest shakeout in the mortgage lending business.

First, consumer protection laws not only protect borrowers, but also the economy. The laws are designed to prevent "weakening" markets by helping consumers make good decisions. However, they should be updated to reflect new market realities, close loopholes, and equally cover all types of businesses.

Second, it is time to hold middlemen responsible for transferring ill-advised loans from unsuspecting borrowers to unsuspecting investors. Investment bankers, mortgage brokers, and mortgage loan pool trustees all have the opportunity to weed out problem loans before they are sold to investors. Too often these companies aid and abet the fleecing of poor borrowers. Third, waiting will not make this problem go away. Eventually the housing market will stabilize, but the structural and legal reality that facilitated the current subprime lending mess will not change until the government acts. We need rules that compel transparency, sound underwriting, and fairness at every level of the mortgage lending business. A step in the right direction would be the creation of a national advisory group tasked with drafting comprehensive consumer credit reform. This advisory group would do well to pay attention to the legal aid lawyers.

Christopher Peterson is an associate professor of law at the University of Florida.

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Subprime Loans Lead to "Losership"

From the Center for Responsible Lending

As subprime foreclosures continue to spiral out of control, the policy debate on how to help homeowners is heating up in Washington. Today the Center for Responsible

Lending (CRL) threw a new fact into the fray: Contrary to popular belief, subprime loans haven't brought any net gains in homeownership. In fact, subprime loans made during the past nine years have led or will lead to a net loss of homeownership.

Mike Calhoun, president of CRL, made this point as part of testimony presented today before the U.S. House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit.

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Subprime Loans Lead to "Losership"

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"Homeownership has been thwarted rather than supported," said Mike Calhoun, CRL president. "There's a difference between increasing access to home loans and expanding home ownership."

The net loss on subprime lending is a result of a market dominated by refinances and high losses. Since 1998, only an estimated 9% of subprime loans have gone to first-time homebuyers. Yet, during the same period, we estimate that 15.6% of all subprime loans originated either have

ended or will end in foreclosure.

In the testimony delivered this morning, Calhoun made several recommendations to policymakers, including these:

- Finalize regulatory guidance that would hold depository institutions accountable for considering borrowers' ability to repay loans.
- Require the Federal Reserve Board to use its authority to strengthen protections on all subprime

loans.

- Strengthen existing bankruptcy law to help homeowners that have already been harmed by abusive subprime loans.

- Hold all industry players accountable for their actions.

For complete details on CRL's "Losership" analysis and a copy of Mike Calhoun's testimony, please visit our website at

www.responsiblelending.org.

LSC Testifies Before Congress At Appropriations Hearing

On March 29, 2007, the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies held a hearing on LSC's budget request for fiscal year (FY) 2008.

LSC has requested \$430.7 million for FY 2008, an \$82 million increase from FY 2007. LSC Chairman Frank B. Strickland and LSC President Helaine M. Barnett testified before the Subcommittee, arguing that the increase was necessary in light of the findings of LSC's groundbreaking report, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*. The report documents that 50% of people seeking help from LSC-funded programs—and are eligible to receive it—are turned away, simply due to lack of resources.

"LSC's Board believes the justice gap is unacceptable...and we hope that Congress shares our

view," said Strickland in his opening statement, "I urge this Subcommittee to help close the justice gap by approving our 2008 budget request."

LSC President Barnett highlighted how LSC provides effective and efficient oversight to its grantees, ensuring the delivery of high-quality legal services in compliance with Congressional restrictions and LSC regulations.

"But LSC cannot fully realize its mission as long as the justice gap endures," said Barnett. "We need a multi-pronged effort to secure more resources from both the public and the private sector. In this effort, the federal government must lead the way....I join Chairman Strickland in urging this Subcommittee to help close the justice gap in measured strides and approve our 2008 budget request for \$430 million."

All Subcommittee members in attendance commended the

work of LSC and expressed appreciation for the valuable contributions made by LSC-funded programs. Subcommittee Chairman Alan Mollohan (D-WV) opened the hearing by describing "justice for all" as a fundamental American principle, adding that more must be done to ensure the principle does not "ring hollow."

Rep. Rodney Frelinghuysen (R-NJ), Ranking Member of the Subcommittee, was detained during the hearing, but arrived at the very end and simply complimented the "fantastic work" done by LSC-funded programs in his state.

2007 General Assembly Consumer Legislation Summary

By Jay Speer, Virginia Poverty Law Center

The following Bills were signed by the Governor and will take effect July 1st:

Motor Vehicle Transaction Recovery Fund—John A. Cosgrove (HB 1779). Provides criteria for awarding of attorney fees.

Retirement benefits: exemption of certain from creditor process—Robert Hurt (HB 2766). Conforms the state exemption of retirement benefits to that allowed under new federal bankruptcy law.

District court: right to remove case to circuit court eliminated—H. Morgan Griffith (HB 2425). Eliminates the right to remove an action from the general district court to the circuit court. An appeal bond is required to be posted within 30 days of judgment except for an appeal of an unlawful detainer. Indigent persons do not have to post an appeal bond except in cases of trespass, ejection, or any action involving the recovering of rents.

Garnishment: exemption of child support payments—Sal R. Iaquinto (HB 2528). Provides that child support payments, whether current or arrears, received by a parent for the benefit of and owed to a child in his custody are not subject to garnishment. This bill does not affect the ability to garnish the income of a child support obligor. A depository wherein child support payments have been deposited has no obligation to determine what portion of the deposits are subject to garnishment.

Odometer readings; exempts

certain vehicles—G. Glenn Oder (HB 3071). Exempts vehicles that were manufactured for a model year at least 10 years earlier than the calendar year in which a sale or transfer occurs and were previously exempt from recording an odometer reading on the certificate of title in another state from odometer reading certifications.

Income tax, state: filing threshold amounts—Walter A. Stosch (SB 778). Increases the filing thresholds for the state income tax for individuals to \$11,250 in 2008, \$11,650 in 2010, \$11,950 in 2012; and for married persons to \$22,500 in 2008, \$23,300 in 2010, and \$23,900 in 2012. The bill also increases the personal exemption amount to \$930 in 2008. This bill is identical to HB 3022.

The following Bills were defeated or withdrawn

PAYDAY LOANS:
(This summary was shamelessly stolen from the Virginia Organizing Project)

Legislation affecting the payday loan industry became one of the highest profile issues of the 2007 legislative session as a result of intense media interest and the many bills introduced to either repeal the Payday Loan Act or reform the payday loan industry.

Twelve bills were introduced in the House and Senate, five to repeal the Payday Loan Act and seven to reform its provisions. The legislation introduced to repeal the Act received little serious consideration in either body. Instead, legislation fueled by the intense lobbying of the

payday loan industry received the most serious scrutiny and discussion. This was the case for House Bill 2563, introduced by Delegate Lee Ware, and Senate Bill 1014, introduced by Senator Richard Saslaw.

These measures, developed by the payday loan industry, become the focal points for the intense legislative debate on the merits of payday loans; unfortunately, neither measure provided any significant reform except on one occasion, and that led to one bill's demise. The provisions in each bill were amended numerous times, but the language in the bills never provided any serious consumer protections for borrowers of payday loans. Instead, they included amendments to the Act that sounded good on the surface, but would never help consumers escape the debt trap created by the loans.

The first bills affecting the Payday Loan Act heard during the session were considered in the Senate Commerce and Labor Committee. The Committee had three bills before it, two repeal bills (Senate Bill 1320 introduced by Senator Locke and Senate Bill 1326 introduced by Senator Stosch) and the aforementioned reform bill, Senate Bill 1014 introduced by Senator Saslaw. After lengthy debate and testimony, the Senate Commerce and Labor Committee adopted minor amendments to Senate Bill 1014 and reported it 11-4. More amendments were added on the floor of the Senate, also minor, before the bill was passed 35-2.

The House Commerce and

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2007 General Assembly Consumer Legislation Summary

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Labor Committee considered nine payday loan bills, three that would repeal the Payday Loan Act and six that would reform it. Once again, after lengthy debate it was the reform bills that received the serious consideration, especially House Bill 2563. A substitute for House Bill 2563 was reported by the Committee 16-6, although the substitute once again included no serious reforms to help protect consumers. When House Bill 2563 reached the floor of the House of Delegates, there was a huge surprise. Delegate Jennifer McClellan offered an amendment that would cap the interest rates at 72 percent APR, a rate that was still twice what most financial institutions could charge in Virginia for loans but far short of the current 391 percent that payday loan providers charge for two week loans. This amendment was unexpectedly approved 55-39 by the House of Delegates. After intense lobbying behind the scenes, the Chief Patron of the bill, Delegate Lee Ware, chose to have the bill stricken from the docket, killing it for the session. His stated reason for doing so was that this interest rate cap was too low for the payday loan industry to survive in Virginia.

That left only Senate Bill 1014 alive. When it was heard by the House Commerce and Labor Committee, Senator Saslaw offered another substitute bill, once again with minor amendments. More minor amendments were offered in the Committee before it was reported 15-7. Senate Bill 1014 was then passed by the full House 72-27. When the bill was returned to the

Senate, as it had to be in order for the Senate to act on the House substitute bill with the amendments that had been adopted, the Senate first agreed overwhelmingly with the Chief Patron to adopt the House changes. The next day, however, Senator Saslaw asked the Senate to reject the House changes and put the bill into a committee of the conference. The Senate agreed to do so, as did the House of Delegates.

Senator Saslaw asked for the bill to be put into the conference committee while he determined what the Governor's intentions were for the bill. Governor Kaine had publicly expressed his concerns with the interest rates charged by the payday loan industry, suggesting that if a cap of 36 percent that the U.S. Congress had imposed on loans to the military was good enough for the country's soldiers, why wasn't it good enough for all citizens? After behind the scenes negotiations toward a compromise failed, Senator Saslaw had Senate Bill 1014 die without a conference committee report. Thus, all payday loan legislation introduced during the 2007 session failed to pass.

Payday loans: requires SCC to contract w/third party to establish database through Internet—G. Glenn Oder (HB 1621).

Lenders are prohibited from making a payday loan unless it has obtained information from the database, or other permitted verification source, that the borrower does not have three or more outstanding payday loans and has not terminated a payday loan within 48 hours.

Payday Loan Act: repeals Act—Jennifer L. McClellan (HB 1684). Tabled in Commerce and Labor (15-Y 7-N)

Payday lending charges: establishing maximum annual interest rate—John A. Cosgrove (HB 1799). Establishes a maximum annual interest rate for payday loans of 36 percent. Currently, payday lenders may charge a fee of 15 percent of the loan proceeds advanced, and as a result the annual percentage rate of interest charged depends on the term of the loan. This bill has been incorporated into HB 2563.

Payday Loan Act: SCC to contract with third party to develop Internet accessible database—Rosalyn R. Dance (HB 1813). Payday Loan Act. Lenders are prohibited from making a payday loan unless they have obtained information from the database, or other permitted verification source, that the borrower does not have two or more outstanding payday loans from one or more lenders. The maximum fee that may be charged in a payday loan is reduced from 15 percent to 7.5 percent of the amount advanced. This bill has been incorporated into HB 2563.

Payday loans: requires SCC to contract w/third party to establish database through Internet—Harvey B. Morgan (HB 1955). The maximum fee that may be charged in a payday loan is reduced from 15% to 10% of the amount advanced. The measure also prohibits a payday lender from making a payday loan to a borrower if the borrower has a payday loan outstanding or

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2007 General Assembly Consumer Legislation Summary

(cont'd from pg. 5)

has terminated a payday loan within the preceding 48 hours. This bill has been incorporated into HB 2563.

Payday Loan Act; SCC to contract with third party to develop Internet accessible database—R. Lee Ware, Jr. (HB 2563). A payday lender is prohibited from making a payday loan to a person who has terminated a payday loan on the loan application date, or if the loan would cause the borrower to have more than three payday loans outstanding at the same time.

Payday Loan Act; notice of alternative lenders—Mark D. Sickles (HB 2819). Requires licensed payday lenders to place a signboard at each licensed payday lending location on which not-for-profit charitable organizations that are willing to make unsecured loans of up to \$500 may post a notice advising persons about their alternative to payday loans. In addition, licensed payday lenders are required to allow financial institutions to place brochures or pamphlets regarding alternative loan programs within payday lending locations. House: Engrossment refused by House

Payday Loan Act; repeals Act—John M. O'Bannon, III (HB 2159). House: Tabled in Commerce and Labor (15-Y 7-N)

Payday Loan Act; repeals Act—Algie T. Howell, Jr. (HB 2243). House: Tabled in Commerce and Labor (15-Y 7-N)

Armed services; loans to members thereof or their dependents—David A. Nutter (HB 3104). Loans to

members of the armed services. Prohibits creditors from making consumer loans to active duty members of the armed services or their dependents at an interest rate that exceeds an annual percentage rate of 36 percent. The measure prohibits certain other practices with respect to consumer loans to covered servicemembers and their dependents, including making a loan without reasonable grounds for believing that the servicemember has the ability to repay the loan, securing the loan with a personal check held for future deposit or electronic access to a bank account, and securing a nonpurchase money loan with a lien on the title to a motor vehicle. House: Tabled in Commerce and Labor

Payday Loan Act; SCC to contract with third party to develop Internet accessible database—Richard L. Saslaw (SB 1014). Senate: Failed to pass in Senate

Motor vehicle title loans; caps rate of interest that may be charged—Harvey B. Morgan (HB 1956). Motor vehicle title loans. Caps at 36% per year the rate of interest that may be charged on loans secured by a motor vehicle title. House: Left in Commerce and Labor

Motor vehicle equity loans; establish system for licensing & regulating revolving lines of credit—Terry G. Kilgore (HB 2000). Establishes a system for licensing and regulating revolving lines of credit secured by equity in a motor vehicle. The maximum amount of a motor vehicle line of credit is \$10,000. Interest and fees may be imposed at such rates as may

be agreed upon by the lender and borrower. Lenders are required to be licensed with the State Corporation Commission. House: Left in Commerce and Labor
Insurance; prohibits insurers from setting rates based on credit history—Clarence E. Phillips (HB 2887). Insurance; use of credit history. Prohibits insurers and agents from setting rates or making policy issuance and renewal decisions for motor vehicle insurance, homeowners insurance, and renters insurance on the basis of a person's credit history, lack of credit history, or credit score. House: Stricken from docket by Commerce and Labor

Motor vehicle insurance; prohibits premiums based on credit history—Jeffrey M. Frederick (HB 2683). Motor vehicle insurance; premiums based on credit. Prohibits insurers from setting rates for motor vehicle insurance on the basis of a person's credit history or credit score. House: Left in Commerce and Labor

Credit report; individual who is victim of identity theft may freeze access thereto—Linda T. Puller (SB 805). Security freezes on credit reports; penalty. 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. Senate: Letter sent to the Governor

Credit report; individual who is victim of identity theft may freeze access thereto (C. Charles Caputo (HB 1877).

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2007 General Assembly Consumer Legislation Summary

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House: Stricken from docket by Commerce and Labor

Credit reports: authorizes an individual to freeze access—Jay O'Brien (SB 1030).

Senate: Letter sent to the Governor

Mortgage loans: prohibits servicers thereof from taking certain actions pertaining to servicing—R. Creigh Deeds (SB 989). Mortgage loan servicing; penalties. Prohibits servicers of mortgage loans from taking certain actions pertaining to the servicing of

such loans, including failing to apply payments to the loan and taking actions for the primary purpose of creating a default under the terms of a mortgage loan. The Bureau of Financial Institutions of the State Corporation Commission is given authority to investigate and enforce the provisions under the Mortgage Lender and Broker Act; although mortgage servicers are not required to obtain licenses under that Act. Senate: Left in Commerce and Labor

Garnishment summons: claims of exemption—Ryan T.

McDougle (SB 1070). Senate: Left in Courts of Justice

Garnishment summons: claims of exemption—David B. Albo (HB 2430). Garnishment summons; claims of exemption. Provides that the garnishee is not required to determine whether any funds held on behalf of a judgment debtor are subject to a claim of exemption. The responsibility to claim any exemption rests with the judgment debtor pursuant to § 8.01-512.4. House: Left in Courts of Justice

Job Announcements from LASEV and LAJC

Legal Aid Society of Eastern Virginia, a non-profit public interest law firm serving the poverty community in civil matters, seeks a managing attorney for its Williamsburg Office. The Managing Attorney is responsible for supervising legal work and general operation of the office, as well as maintaining a caseload and outreach to the community. The office includes a clinic of the William and Mary Law School and is located in Williamsburg. Applicants should be licensed and have a passion for poverty law. Salary DOE plus excellent benefit package. **Mail cover letter and resume to Executive Director, LASEV, 125 St. Paul's Boulevard, Suite 400, Norfolk, VA**

Legal Aid Society of Eastern Virginia, a non-profit public interest law firm serving the poverty community in civil matters, seeks two staff attorneys for its Central Intake Special Projects Unit and its Virginia Beach office. Applicants should be licensed and have an interest in poverty law. Salary DOE plus excellent benefit package. **Mail resume to Administrator, LASEV, 125 St. Paul's Boulevard, Suite 400, Norfolk, VA**

The Legal Aid Justice Center, which is nationally recognized for providing the highest quality legal services to low-income individuals, seeks an attorney in its Charlottesville, VA office. This attorney will be responsible for a broad range of civil legal cases involving consumer protection, housing, employment and public benefits issues. Spanish fluency strongly preferred. Salary DOE. Excellent benefits include law school loan repayment assistance.

To apply, please send cover letter, resume, 3 references and brief writing sample to:

Alex R. Gulotta, Executive Director
1000 Preston Avenue, Suite A
Charlottesville, VA 22903

E-mail submissions must be followed by hard copies to be considered. The Legal Aid Justice Center is an Equal Opportunity Employer. Diverse candidates and persons with disabilities are encouraged to apply.

2007 General Assembly Elder Law Legislation Summary

By Kathy Pryor, Virginia
Poverty Law Center

PASSED:

Long Term Care:

Nursing Facility Improvement Program: Director of DMAS to Establish Program Thereof—Vivian Watts (HB 2290). The bill requires the Director of the Department of Medical Assistance Services to establish a Nursing Facility Quality Improvement Program designed to improve the health, safety and welfare of residents in nursing homes, through the use of civil money penalties collected from facilities which are not in compliance with federal survey requirements. The bill requires DMAS to develop the program in cooperation with affected state agencies, representatives of the nursing home provider community, and advocacy groups. The bill also provides that the Director develop a strategic plan and progress report to be presented to the Governor, chairmen of the House Committees on Health, Welfare and Institutions, and Appropriations, the Senate Committees on Education and Health, and Finance; and the Joint Commission on Health Care no later than October 1, 2007.

Senior Alert Program Created—Nick Rerras (SB 1117) and Allen Dudley (HB 2372). The bill adds § 15.2-1718.1 and § 52-34.4 through 52-34.6 to create a program for local, regional or statewide notification of a missing adult who is over 60 years of age and suffers with a cognitive impairment, including a diagnosis of Alzheimer's Disease or dementia, to the extent that he is unable to care for himself without assistance from a caregiver. It creates a voluntary system to input identifying and descriptive data into the system about a missing senior adult within 2 hours of

receiving the report and to alert the state police and notify other law-enforcement agencies in the area to initiate an investigation.

Sex Offender Registry: Nursing Homes and Assisted Living to Register with State Police to Get Notification Thereof—Janet Howell (SB 1229) and Robert Bell (HB 2345). The bill amends Virginia Code § 9.1-914 to require nursing homes and assisted living facilities to register with the Department of State Police to receive automatic notification of the registration of sex offenders within the same or contiguous zip code area as the facility. The bill also requires a nursing home (§ 32.1-127) or an assisted living facility (§ 63.2-1732) to determine, prior to admission, whether a prospective resident is a registered sex offender if the facility anticipates that the prospective resident will stay in the facility for more than 3 days or in fact does stay in the facility for more than 3 days.

Sex Offender Registry: Notification in Nursing Homes and Assisted Living Facilities—Janet Howell (SB 1228) and Robert Bell (HB 2346). This bill amends § 32.1-138 and § 63.2-1808 to require nursing homes and assisted living facilities to inform new residents, prior to or at the time of admission and during his stay, that "he should exercise whatever due diligence he deems necessary with respect to information on any sexual offenders registered pursuant to Chapter 9..., including how to obtain such information" and, upon request, to assist the resident, prospective resident or legal representative in accessing this information and providing copies of the requested information.

Assisted Living Facilities: Exempts Certain Hospices from Licensing Requirements—John

O'Bannon (HB 1965). The bill amends § 32.1-162.1 et. seq. and § 63.2-1806. The bill defines "hospice facility" and exempts hospice facilities with 16 or fewer beds from certificate of public need laws and regulations (facilities with more than 16 beds must be licensed as a nursing facility or hospital and be subject to COPN laws and regulations). The bill provides that hospice facilities shall be licensed by the Department of Health and that regulations promulgated by the Board shall include standards for the care, treatment, health, safety, welfare and comfort of the patients and their families. The bill eliminates existing provisions authorizing an entity licensed as a hospice to concurrently hold a license to operate as an assisted living facility and authorizing an entity licensed as an assisted living facility to concurrently hold a license as a hospice.

Assisted Living Facilities: Resident Shall Not Be Removed by Board of Social Services—Christopher Peace (HB 3207). The bill amends § 63.2-1805 to prohibit removal of a resident from an assisted living facility by the Department of Social Services where the resident, resident's family, resident's physician, and the facility consent to the resident's continued stay and the facility is capable of providing, obtaining or arranging for the provision of necessary services for the resident, including but not limited to home health care and/or hospice care. The provisions regarding certain conditions of care which preclude admission or retention of an individual in an assisted living facility remain unchanged.

Criminal History Check for Providers of Services to Adults—Emmett Hanger (SB 1207). The

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2007 General Assembly Elder Law Legislation Summary

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bill amends § 19.2-389 and adds § 63.2-1606.1 to allow public agencies required to do so by federal or state law to obtain criminal history record information (limited to information about whether or not there has been any conviction for a barrier crime as defined by § 63.1-1719) on any individual seeking approval as a provider of home-based services or adult foster care and on all adult household members. The bill provides that a local board not hire for compensated employment any persons convicted of a barrier crime as defined by § 63.2-1719. The bill also allows a local board to obtain this information from a criminal justice agency in emergency circumstances and states that the provision of home-based services be immediately terminated or an adult removed from the home immediately if it is determined that an adult in the home has been convicted of a barrier crime.

Caregivers Grant Program; Modifies Definition of Eligible Caregivers—Walter Stosch (SB 790). The bill amends §§ 63.2-2200 et seq. to define caregiver to include either someone related by blood, marriage or adoption or the legally appointed guardian of the impaired person for whom he is caring. It also provides that, to be eligible for a grant, a single caregiver must have an adjusted gross income of not more than \$50,000 and a married caregiver must have a combined adjusted gross income of both spouses of not more than \$75,000.

Department for the Aging; Expands Long-Term Care Services—Phillip Hamilton (HB 2032). The bill amends § 2.2-701 of the Code to expand the type of long-term care services that must be provided to include transportation,

education and housing services (in addition to nutrition, health, socialization and daily living services which were already listed). It also highlights the importance of a balanced range of services for impaired seniors; the need for meaningful choice and affordability; the importance of providing services in the least restrictive, most independent and most appropriate living situation possible; and the need to encourage maximization of self-care and independent living within the mainstream of community life.

Secretary of Health and Human Resources; Clarifies Powers to Implement Long-Term Care Policy—Linda Puller (SB 1024); Phillip Hamilton (HB 2033). The bill amends § 2.2-212 to clarify that the Secretary of Health and Human Resources serves as the lead Secretary for the coordination and implementation of the long-term care policy of the Commonwealth, working with the Secretaries of Transportation, Commerce and Trade, and Education, and the Commissioner of Insurance to facilitate interagency service development and implementation, communication and cooperation.

Health Commissioner; Duties Thereof—Phillip Hamilton (HB 2378) and Frederick Quayle (SB 1240). The bill amends § 32.1-19 to state that the Commissioner of Health, in the licensure of health care facilities, shall ensure that the quality of care, patient safety, and patient privacy are the overriding goals of licensure and enforcement efforts. The bill also provides that the Commissioner coordinate the department's emergency preparedness and response efforts and ensure that prevention of disease and protection of public health remain the department's

overriding goals.

Criminal History Record Information; Disseminated to DMAS for Screening Individuals—Roscoe Reynolds (SB 1195). The bill amends § 19.2-389 to allow criminal history record information to be disseminated to DMAS or its designee for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in Medicaid or FAMIS or any other program administered by DMAS.

Nursing Home Beds; Authorizes Issuance of Certificates of Public Need for Relocation Thereof—Robert Wittman (HB 1992). The bill provides that regardless of the provisions of § 32.1-102.3 and 32.1-102.3:2 and Board of Health regulations, the Commissioner of Health may issue a certificate of public need for the relocation of nursing home beds from one facility to another facility under common ownership or control, regardless of whether they are in the same planning district, if, as of December 31st of the preceding year, the occupancy rate of the facility seeking to relocate beds was less than 67%, more than 25% of the residents of the facility from which beds are to be relocated, immediately prior to moving to the facility, resided outside the planning district in which the facility is located, and the facility to which beds are to be relocated has experienced an average occupancy rate that meets or exceeds 90%. An entity may not relocate more than two-thirds of the total number of beds for which the facility was licensed. Any restrictions applicable to the

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certificate at the time of the relocation remain in effect following the relocation.

Nursing Facility Services; Extends Sunset Provision for those with Certain Certificates of Public Need—Mark Herring (SB 740); David Poisson (HB 1630). The bill adjusts the previously amended certificate of public need authorization for three continuing care facilities established for the care of retired military personnel and their spouses or widows or widowers to extend the deadline for discontinuing the admission of private pay patients who are not contract holders from July 1, 2008 to July 1, 2013, if the facility's contract holder occupancy rate is less than 85%.

Incapacitated Adults: Increase Penalties for Certain Crimes Against—Jay O'Brien (SB 1025). The bill amends § 18.2-369 to make a person responsible for the care, custody or control of an incapacitated adult guilty of a Class 3 felony—punishable by imprisonment of not less than 5 years or more than 20 years and a fine of not more than \$100,000— if the incapacitated adult dies as result of abuse or neglect by the responsible caregiver.

Burial and Funeral Expenses: Preneed Contracts—Harvey Morgan (HB 1953). The bill amends §§ 6.1-5, 54.1-2820, and 54.1-2822 to authorize an incorporated association that is authorized to sell burial association group life insurance certificates, and that has the principal purpose of assisting its members in financial planning for their funerals and burials and obtaining insurance for the payment for funeral and burial expenses, to serve as the trustee of a trust established to fund a preneed funeral contract. The bill also clarifies the method of calculating the

inflation adjustment that is required when a life insurance or annuity contract is used to fund a preneed funeral contract. As originally introduced, the bill also would have increased the burial funds disregard under Medicaid from \$3,500 to \$7,000, but that provision was struck in House Appropriations.

Practitioners; May Authorize Certain Personnel to Administer Drugs and Devices—Phillip Hamilton (HB 2037). The bill amends § 54.1-3408 to authorize personnel who have been properly trained to assist a doctor of medicine or osteopathic medicine who are acting pursuant to a specific order for a patient and under a doctor's direct and immediate supervision to administer controlled substances, provided the method does not include intravenous, intrathecal, or epidural administration and the prescriber remains responsible for the administration.

Budget Items:

Increase in the Personal Needs Allowance for Medicaid-Eligible Nursing Home Residents from \$30 to \$40 per month.

Increase in the Auxiliary Grant rate for those in Assisted Living Facilities to \$1,061.

Allocation of \$1.0 million from the Community Mental health Services Block Grant for 2 Specialized Geriatric Mental Health Services pilot programs to provide discharge assistance to those transitioning from, or diverting individuals from admission to, state mental health geriatric units.

Language to report on the feasibility of restructuring the Auxiliary Grant program to make it a portable benefit for disabled consumers who choose housing arrangements other than assisted living facilities.

Guardians/ Powers of Attorney:

Powers of Attorney; Duties and Liabilities of Agents—Brian Moran (HB 2864). The bill amends §§ 11-9.1, 11-9.6, and 37.2-1018 to clarify that the holder of a power of attorney is an agent who stands in a fiduciary relationship with the principal and that the agent may be held liable for a breach of fiduciary duty to the principal. It also provides that if an agent is removed because of abuse, neglect or exploitation of the principal, all fees and costs associated with the removal proceeding, including the attorney's fees of the prevailing party, must be borne by the agent. The bill expands the financial accounting and disclosure of records requirement for an agent from two to five years prior to the request or to the date of the death of the principal, as well as the capacity of a 'person interested in the welfare of the principal' to obtain discovery of such records in circuit court, pursuant to § 37.2-1018, if the agent has refused disclosure pursuant to a request under §11-9.6, if such information is needed to determine the propriety of instituting a proceeding against the agent or of terminating, suspending or limiting the authority of the attorney-in-fact.

Attorneys-in-Fact; Challenges Thereto After Death of Principal—Mark Obenshain (SB 1235). The bill amends §§ 11-9.6 and 37.2-1018 to clarify that challenges may be made to actions of an attorney-in-fact, and discovery may be obtained, after the death of the principal by a person interested in the welfare of the principal, including the personal representative of the estate of the deceased principal. The bill provides for discovery pursuant

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to § 37.2-1018, after first seeking disclosure under § 11-9.6 without compliance within 60 days, for the purpose of obtaining information from the attorney-in-fact or other agent regarding actions taken pursuant to the powers or authority conferred by the power of attorney or other document, which are pertinent to the need or propriety of (1) instituting a proceeding under chapter 37; (2) terminating, suspending or limiting the authority of the attorney-in-fact; or (3) bringing a proceeding to hold the attorney-in-fact or other agent, or a transferee from such attorney-in-fact or agent, liable for breach of duty or to recover particular assets or the value of such assets of the principal or deceased principal.

Fiduciaries: Presumption of Prudence—Robert Hurt (HB 2767). The bill amends §§ 26-40.01, 26-45.13, 31-48, and 55-34.7 to clarify that fiduciaries (including custodians and custodial trustees) will receive the presumption of prudence in investing only in a calendar year in which the value of the intangible personal property under his management does not exceed \$100,000 at the beginning of the year or when the fiduciary has obtained express authorization from a court with jurisdiction that the presumption of prudence is applicable.

Conservator: Requirements for Sale of Real Estate—Adam Ebbin (HB 3177). The bill amends § 37.2-1023 to provide that, prior to conveyance of real estate, the court may require a conservator of a person deemed incapacitated to use a common source information company when listing the property for sale.

Liens: Nonexoneration Thereof Against Property Bequeathed—David Toscano (HB 3083). Adds § 64.1-157.1 to provide that generally, unless a contrary intent is clearly set out in the will, a bequest or devise of real or personal property passes encumbered by any lien, mortgage, or security interest, except when the lien was granted by a guardian, conservator or holder of a power of attorney.

Trusts and Estates:

Doctrine of Worthier Title: Abolished—Sal Iaquinto (HB 2829). The bill adds § 55-14.1 to abolish the doctrine of worthier title as a rule of law and rule of construction in Virginia.

Spendthrift Trust: Related Duties—Katherine Waddell (HB 2832). The bill amends § 55-541.05 to make the statute more consistent with other related code sections, and amends §§ 55-545.01, 55-545.03, and 55-545.06 to make it clear that a creditor generally cannot reach a beneficiary's interest if the instrument contains a spendthrift provision, limits an exception creditor's access to a beneficiary's benefits and defines mandatory distribution respectively.

Augmented Estate: Inclusion of Insurance Policies—Katherine Waddell (HB 2833). The bill amends §§ 64.1-16.1 and 64.1-16.2 to clarify that, regardless of what other statutes state regarding insurance policies and other benefits, they are to be included in the augmented estate. The bill is in response to the Supreme Court's opinion in Sexton v. Cornett.

Creditors of Decedent's Estate: Debts and Taxes Owed to Political Subdivisions to be Seventh in Line—Mark Herring (SB 1263). The bill amends

§64.1-157 to add a category for debts and taxes due the political subdivisions of the Commonwealth, including localities and municipal corporations, as the seventh in line to be paid out of the decedent's estate— after debts and taxes due the Commonwealth.

Life Insurance: Clarifies Provisions Addressing When a Trustee Has an Insurable Interest Therein—Terry Kilgore (HB 2001). The bill amends § 38.2-301 to clarify that the provisions addressing when a trustee has an insurable interest in a life insurance policy are to be applied whether the policy was owned by a trustee before, on, or after July 1, 2005, the effective date of the legislation that enacted these provisions.

Divorce: Revocation of Death Benefits, Federal Preemption—Todd Gilbert (HB 2830). The bill amends § 20-111.1 to provide that if federal law preempts the payment of a death benefit, the former spouse who was paid the benefit because of federal preemption is liable for the amount received to the person who would have been paid the benefit had the statute not been preempted.

Consumer:

Minimum Wage Act: Repeals Exclusion for Persons Who Are 65 Thereunder—David Englin (HB 2738) and Walter Stosch (SB 758). The bill amends § 40.1-28.9 to repeal the existing exclusion for persons who have reached age 65 from the definition of an employee under the Virginia Minimum Wage Act.

Retirement Benefits; Exemption of Certain from Creditor Process—Robert Hurt (HB 2766). The bill amends § 34-34 to conform the state exemption from creditors of

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retirement benefits to what is allowed under federal bankruptcy law.

Income and Real Property

Taxes:

Residential Tax Credit: To Improve Accessibility and Visitability for New or Existing Residence—Linda Puller (SB 791) and Robert Orrock (HB 2498); incorporating HB 1721 (Eisenburg) and HB 3026 (Lingamfelter). The bill amends § 58.1-339.7 to require the Department of Housing and Community Development to develop guidelines establishing the eligibility requirements for the tax credit of \$500 (for the purchase of a new residence, or 25% of the cost of retrofitting an existing residence, up to \$500), now called the “Livable Home Tax Credit,” and extends the credit to any taxpayer who purchases a new residence or retrofits an existing residence on or after January 1, 2008, as long as the new residence or retrofitting of the existing residence is designed to improve accessibility, provide universal visitability, and meets the eligibility requirements established by the Department of Housing and Community Development.

Real Estate Tax: Relief for Elderly and Permanently and Totally Disabled—Mark Herring (SB 1265). The bill amends §§ 58.1-3210, 58.1-3213, and 58.1-3215 and adds a section 58.1-3211.1 to authorize local governments to extend real estate tax relief to dwellings jointly held between individuals not all of whom are 65 or older or permanently and totally disabled, as long as the dwelling is occupied as the sole dwelling of all joint owners and the net combined financial worth of all joint owners for the preceding year does not exceed the stated amount for the locality. The tax relief would be prorated based upon the

percentage of ownership interest in the dwelling held by all joint owners who are at least 65 or permanently and totally disabled. The proration does not apply when the joint owners are husband and wife without other joint owners.

Real Estate Tax: Increases Income Limit for Elderly and Disabled Taxpayers in Certain Cities—Walter Stosch (SB 788). The bill amends § 58.1-3211 to increase from \$52,000 to \$62,000 the income limit in certain cities (Charlottesville, Chesapeake, Norfolk, Portsmouth, Richmond, Suffolk, and Virginia Beach) and counties (Chesterfield, Goochland and Henrico) for eligibility for elderly and permanently and totally disabled real estate tax relief programs.

Real Estate Tax: Increases Income Limit for Elderly and Disabled Taxpayers—Robert Marshall (HB 1744). The bill amends § 58.1-3211 to increase the income limit for elderly and disabled taxpayers from \$72,000 to \$75,000 for real property tax exemptions for those living in the counties of Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, and Stafford or in the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park and in any incorporated town in the named counties.

Constitutional Amendment: Exempts Certain Homeowners from Taxation (First Reference)—Nick Rerras (SJ 354; incorporating SJRs 362, 371, 386, 398, 425, and 443). The Constitutional amendment would amend §6 of Article X of the Virginia Constitution to authorize the General Assembly to enact legislation that will allow localities by ordinance to exempt from real property taxes, or defer real property taxes on, up to 20% of the value of residential or farm

property that is designed for continuous habitation and is occupied as the primary dwelling of the individual owners.

Miscellaneous:

Government Performance and Results Act: Each Agency to Report Progress Addressing Impact of Aging—John Reid (HB 2624). The bill amends § 2.2-5510 to require each agency to report to the Department for the Aging by November 15th of each year the agency’s progress in addressing the impact of the aging population, according to guidance established by the Secretary of Health and Human Resources. Based on the information received, the Department for the Aging must prepare a report summarizing the progress made by the agencies and submit the report to the Governor and the General Assembly by June 30 of the following year (previously, the agencies were to report directly to the Governor and G.A. by October 1st, naming at least five specific actions to address the impact of the aging population).

Condominium Act: Allows Elderly or Disabled Tenants in Conversion Units to Assign Purchase Right—David Englin (HB 2727) and Mary Margaret Whipple (SB 968). The bill amends § 55-79.94 to allow a condominium conversion tenant who is disabled or elderly to assign the exclusive right to purchase his unit to a government agency, housing authority, or certified nonprofit housing corporation, which shall then offer the tenant a lease at an affordable rent. The bill provides that the acquisition of such units by the governmental agency, housing authority, or certified nonprofit housing corporation shall not exceed the greater of one unit or 5% of the total number of units in the condominium or

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impede the condominium conversion process.

False Claim or Attempt to Defraud State; Increases Civil Penalty—Martin Williams (SB 1183). The bill amends §§ 8.01-216.3, 8.01-216.5, 8.01-216.6, 8.01-216.9, 32.1-312, and 32.1-313 to increase the minimum and maximum civil penalty for making a false claim to, or attempting to defraud, the Commonwealth to \$5,500 and \$11,000, makes the violator liable for reasonable attorney's fees and costs, and provides that civil fraud actions brought by the Commonwealth to recover medical payments or benefits provided directly or indirectly by the Commonwealth must be brought within 6 years of when the violation was committed, or within 3 years after the fraud was discovered or reasonably should have been discovered, but in no event more than 10 years after the violation was committed, regardless of when it was discovered.

FAILED/TABLED/STRUCK:

Long-Term Care; Adult Fatality Review Team; Duties; Membership; Confidentiality; Penalties; Report—John O'Bannon (HB 2158) and Adam Ebbin (HB 3166). The bill would have required the Commissioner of the Department of Health and the Chief Medical Examiner to develop an Adult Fatality Review Team to review suspicious deaths of adults in order to create a body of information to help prevent similar fatalities. The team would have reviewed the deaths of any incapacitated adult over age 18 and of any adult age 60 or older (i) who was the subject of an adult protective services investigation, or (ii) whose death was due to abuse or neglect or acts that suggest

abuse or neglect, or (iii) whose death already came under the jurisdiction of the Office of Chief Medical Examiner pursuant to § 32.1-283. Both bills were referred to House Appropriations where they were left.

Nursing Homes: Requires Board of Health to Establish Staffing Standards Therein—Vivian Watts (HB 2607). As introduced, the bill would have established minimum staffing standards of 4.1 hours of direct care services per resident per 24-hour period beginning July 1, 2012 and, beginning July 1, 2014, would have prevented any nursing home reporting less than an average of 4.1 hours of direct care services per resident per 24-hour period for the quarter from accepting new patients. However, by the time the bill came to the health subcommittee of House Health, Welfare and Institutions, the patron had deleted the staffing hours requirement, leaving only the obligation of facilities to report the number of direct care services hours provided to each resident quarterly based on payroll information reported to the IRS. Even this diluted bill failed to report and was tabled in HWI.

Fire Prevention Code: Requires Automatic Sprinkler Systems, etc. in Certain Structures—Jennifer McClellan (HB 2297). The bill would have required the Board of Housing and Community Development to establish standards for requiring automatic sprinkler systems or other fire suppression systems in buildings that are more than 75 feet or more than 6 stories high and used, in whole or in part, as either a residential dwelling unit designed or developed and marketed to persons aged 60 and older or an assisted living facility licensed by the Department of Social Services. The bill was passed by in House General Law with a letter.

Carbon Monoxide Detector; Board of Housing & Community Development to Install in Dwelling Units—Frank Ruff (SB 1077). The bill would have required the installation of carbon monoxide detectors in assisted living facilities (if the facility had units or living space with an attached garage, adjacent to a parking space, or containing or serviced by an appliance or device that uses carbon-based fuels), and college dorms by July 1, 2010. It required the Board of Housing and Community Development to promulgate regulations and would have required the Board and the Fire Services Board to establish a working group to develop a public education program focusing on the dangers of carbon monoxide poisoning and preventive measures to alleviate such dangers. The bill passed the Senate but was passed by in House General Laws with a letter.

State Medical Assistance Plan; DMAS to Contract with DMHMRSAS for Mental Health Services—Phillip Hamilton (HB 2038). The bill would have required DMAS to contract directly with DMHMRSAS for the provision of mental health services in underserved areas as defined by the State Board of Health. The bill was tabled in HWI.

Medical Assistance Services; State Plan to Include Provision for Medically Needy Aged and Disabled—Roscoe Reynolds (SB 1325). The bill would have amended § 32.1-325 to require the state plan for medical assistance services to include a provision for payment of Medicaid for aged and disabled individuals with incomes up to 100% of the federal poverty guideline. However, an enactment clause provided that the provisions of the act would

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not become effective unless there is an appropriation of general funds for this purpose included in the 2007 general appropriations act. Left in Appropriations.

Geriatric Mental Health Care Services; DMHMRSAS to Develop Pilot Program

Therefore—Vivian Watts (HB 2636). The bill would have required DMHMRSAS to develop and operate a pilot program for the provision of specialized geriatric mental health care services, including mental health services to those in the community and intensive mental health services to those residing in one nursing home and one assisted living facility and to provide consultation and training to 25 residential facilities including long term care facilities. The bill was left in House Appropriations.

Child or Adult Abuse or Neglect; Animal Control Officers

Required to Report—Patricia Ticer (SB 935). The bill would have added animal control officers to the list of persons required to report known or suspected adult (or child) abuse, neglect or exploitation, and would have required mandatory cross-reporting of known or suspected animal abuse or neglect by individuals required to report child or adult abuse or neglect. The bill was stricken at the request of the patron in Senate Rehabilitation and Social Services.

Criminal History Record Information Check; Businesses Required to Conduct and Pay

Cost—Emmett Hanger (SB 1210). This bill would have required any business or organization (including nursing homes, assisted living facilities, home care organizations, licensed hospice and others) that is required to conduct a national criminal background check to bear the costs of the

background check but would have allowed them to recoup the cost from the applicant. The bill also would have assessed a civil penalty of up to \$500 for knowing, willful failure to comply with the background check requirements and could have imposed additional statutory measures to revoke the licensure of facilities. The bill was stricken at the request of the patron in Senate Rehabilitation and Social Services.

Nurses and Nursing Aides, Licensed Practical; Board of Nursing to Study Parity

Therefore—Charles Carrico (HJ 631). The bill requested the Board of Nursing to study pay rates for LPNs, nursing aides, and other nursing staff in other states; to analyze the pay scales for these groups in Virginia; to identify factors affecting pay rates in Virginia; and to identify steps that can be taken to ensure that Virginia's rates are competitive with rates throughout the nation to make Virginia a more attractive environment for LPNs and nursing aides seeking to establish careers. The bill was left in House Rules committee.

Long-Term Care: Joint Subcommittee to Study Prepaid Program for Citizens

—Kristen Amundson (HJ 704). This bill would have established a joint subcommittee to study the creation of a prepaid long-term care program for Virginians and to examine the Virginia College Savings Plan as a model to assess whether a similar program would be feasible to help people save for long-term health care. The bill was left in House Rules committee.

Adult Group Homes: JLARC to Study Financial Oversight

Therefore in State—Clarke Hogan (HJ 710). Noting the vulnerable status of elderly and disabled adults living in group homes and their possible vulnerability to financial fraud, the bill

requested JLARC to examine and propose standards for financial review of the operation of group homes with less than 4 adults and to review the disbursement and expenditure of Social Security disability and other types of federal public benefits received by the adult residents of these group homes. The bill was left in House Rules committee.

Guardian/ Power of Attorney; Guardian Ad Litem; Report

Evaluating Respondent—Frank Ruff (SB 1347). The bill would have amended § 37.2-1005 to provide that if a report evaluating the respondent is not available, the court shall order a report and delay the hearing until the report is prepared, filed and provided to the guardian ad litem. The bill was left in Senate Courts of Justice.

Guardians and Conservators; Use of Real Estate

Professionals—David Englin (HB 2741). The bill would have amended §§ 31-14.1 and 37.2-1023 to require that guardians and conservators of incapacitated adults or minors use a real estate professional licensed under § 54.1-2100 et seq. to conduct any sale of real estate in connection with the management of the estates. The bill was left in House Courts of Justice.

Fiduciaries; Expenses and Commissions Allowed Reviewed

by Commissioners—Charles Carrico (HB 2846). The bill would have amended § 26-30 to clarify that the compensation for a fiduciary fixed by the instrument shall be presumed to be reasonable and not altered by the commissioner unless evidence is produced that it is unreasonable. The bill was left in House Courts of Justice.

Trusts and Estates;

Bank Account Balances of Deceased Persons; Increases

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Amount Bank May Distribute to Distributee, etc.—Terry Kilgore (HB 2002). The bill would have amended § 6.1-71 to increase the amount which the bank could distribute from the person's bank account to deceased person's spouse or distributee, after 60 days following the person's death, from \$15,000 to the amount allowed under the Virginia Small Estate Act, § 64.1-132.2.A.1 (currently \$50,000). The bill was stricken from the docket by House Commerce and Labor.

Access to Safe-Deposit Boxes—Charles Carrico (HB 2112). The bill would have amended § 6.1-332.1 to require a safe-deposit company or bank to allow the spouse or next of kin of a deceased lessee of a safe-deposit box, or a court clerk or other interested party, to have access to the decedent's safe deposit box for the limited purpose of looking for a will or other testamentary instrument. The bill was passed by with a letter in House Commerce and Labor.

Course of Descents: Clarify—Mark Herring (SB 1264). The bill would have amended § 64.1-1 to clarify the course of descents when a person dies intestate by adding subdivisions to the fifth level. The bill was left in Senate Courts of Justice.

Consumer:

Insurance: Prohibits Insurers from Setting Rates Based on Credit History—Clarence Phillips (HB 2887). The bill would have prohibited insurers and agents from setting rates or making policy issuance and renewal decisions for motor vehicle insurance, homeowners insurance and renters insurance on the basis of a person's credit history, lack of credit history or credit score. The bill was stricken from the docket by House Commerce

and Labor.

Garnishment Summons: Claims of Exemption—David Albo (HB 2430) and Ryan McDougale (SB 1070). The bills would have stated that no garnishment summons could be issued requiring a garnishee to determine whether funds in an account in the judgment debtor's name were subject to a claim of exemption; instead, such exemptions must be identified and claimed by the judgment debtor pursuant to § 8.01-512.4. The House bill was left in House Courts of Justice and the Senate bill was left in Senate Courts of Justice.

Credit Report Security Freeze: Penalties—Vincent Callahan (HB 3056), Frederick Quayle (SB 946), Jay O'Brien (SB 1030), Linda Puller (SB 805), Charles Caputo (HB 1877), Robert Bell (HB 2963), Kathy Byron (HB 2804). There were a whole series of bills which, in different ways, would have authorized an individual to freeze access to his credit report, provided a way to release the credit report under specific circumstances, and established penalties if a credit reporting agency improperly released a credit report with a freeze on it. All these measures were either tabled, stricken, or passed by with a letter in the respective Commerce and Labor committee.

Income and Real Property Taxes:

A variety of **income tax measures** were filed but failed to report out of House Finance, including **HB 2609 (Watts)** which would have provided an income tax credit for taxpayers who paid medical and in-home care expenses for family members living with the taxpayer; **HB 2608 (Watts)** which would have granted an income tax deduction of \$10,000 for licensed medical caregivers who provided medical-related services to

individuals in their homes; **HB 2810 (Sickles)** which would have provided a tax credit for certain expenses for prescription drugs paid by the individual during the tax year, equal to 100% of the amount paid for prescription drugs as a result of the coverage gap under Medicare Part D Prescription Drug Program; **HB 1821 (Suit)** which would have provided an age deduction of \$6,000 for individuals aged 62-64 and \$12,000 for those 65 and older, without reduction where the income exceeded \$50,000 for a single taxpayer or \$75,000 for a couple, for taxable years beginning on and after January 1, 2008; **HB 2577 (Shannon)** would have provided that beginning on or after January 1, 2008, those taxpayers born between January 1, 1939 and January 1, 1942, who are subject to a means test at age 65 with regard to the \$12,000 deduction, would be allowed a deduction of no less than \$6,000; **HB 2643 (Caputo)** would have indexed the \$12,000 and \$6,000 age deduction amounts based on the Consumer Price Index for taxable years beginning on or after January 1, 2008.

Several **real property tax measures** affecting the elderly also failed to report out of committee: **HB 2283 (Watts)** would have created a formula for determining net financial worth with regard to deferring or exempting real estate taxes for elderly and disabled in certain localities; **HB 2909 (Spruill)** and **SB 1424 (Quayle)** would have allowed localities to grant higher percentages of tax relief to the elderly based on increasing age, especially for those 75 and older; **HB 2641 (Gear)** would have required indexing the income limits annually based on the percentage change in the Consumer Price Index for purposes of the real property tax exemptions for elderly and disabled.

2007 General Assembly TANF Legislation Summary

By Ty Jones, Virginia Poverty Law Center

The following bills were signed by the Governor and will take effect on July 1st.

Home Energy Assistance Program—(HB 1692).

Reduced the frequency of the reports required from the Department of Social Services regarding the effectiveness of low-income energy assistance programs in the Commonwealth. The reports which currently are due annually on October 1, will now be due biennially.

Virginia Initiative for Employment not Welfare (VIEW) program: increase of requirements—(SB 1133).

Modifies the TANF program to increase VIEW requirements.

The bill reduces the individuals who may be exempt from the work participation requirement and expands the definition of work activity to meet the federal definition. The bill authorizes post-termination payments of up to \$50 per month for recipients who work at least 30 hours per week. This bill is a result of the need for Virginia to come into compliance with the new work requirements that were implemented with the Deficit Reduction Act of 2005.

The following bills were referred to Finance or Appropriations where they were left to die.

TANF: eligibility for food stamp if convicted of drug related felony—(HB 2612). This bill

would allow individuals who have a felony drug possession conviction to become eligible for TANF if they meet all other requirements for participation. *This bill died in the House Appropriations Committee.*

TANF: eligibility for food stamps if convicted of drug-related felony—(SB 835). Provides exemption to receive TANF benefits for persons who have been convicted of a felony drug offense pursuant to § 18.2-250 and comply with criminal court orders and treatment programs, as permitted by federal law. *This bill died in the Senate Finance Committee.*

2007 General Assembly Housing Legislation Summary

By Jim Naggles, Virginia Poverty Law Center

The following are summaries of bills affecting landlord and tenant and other housing-related matters. Under the title PASSED are bills, with actual text, that are of particular interest to used or not, are of less interest because they affect our clients.

Since not all of the bills passed have been signed by the Governor, there is a possibility that some of them might be vetoed or amended. Unless otherwise indicated the bills that have completed the entire process will take effect July 1, 2007.

PASSED

Virginia Residential Landlord and Tenant Act: early termination of leases by

military personnel—Terrie L. Suit (HB 1816). Removes the provision that final rent, in the event of early termination of the rental agreement by military personnel, is to be prorated to the date of termination and payable at such time as would have otherwise been required by the terms of the rental agreement. The bill conforms the Virginia Residential Landlord and Tenant Act to federal law on this issue.

03/15/07 Governor: Acts of Assembly Chapter text (CHAP0252)

Virginia Residential Landlord and Tenant Act: noncompliance with rental agreement—David B. Albo (HB 2147). Allows a landlord to set a date for an initial hearing on the landlord's action for immediate possession of the premises,

not to exceed 30 days after notice is served on the tenant in cases where there is a breach of the tenant's obligations under the Virginia Residential Landlord and Tenant Act or the rental agreement that involves or constitutes a criminal or a willful act, which is not remediable and poses a threat to health or safety. Currently, the initial hearing must be set within 15 days after notice is served on the tenant. Provides that failure by the court itself to hold hearings as set won't be cause for dismissal of the case.

03/12/07 Governor: Approved by Governor-Chapter 273 (effective 7/1/07)

Landlord termination of lease

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2007 General Assembly Housing Legislation Summary

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for rehabilitation: update of interest on security deposit—G. Glen Oder (HB 2188). Allows a landlord to terminate a lease upon 120 days' notice to tenant for rehabilitation of a building with four or more rental units, regardless of the terms of the lease. Also formalizes that a landlord may charge a \$50 processing fee for a bad check tendered for rent. Also would update interest rates on security deposits.

The bill was directed toward a couple of cases in which the court held that the 120-day notice was to be tacked on top of the normal 30 or 60 day notice provided for in the lease. This makes it clear that in the case of change of use including substantial rehabilitation (not just replacing kitchen cabinets, for example) the landlord can give the tenant 120 days notice. I considered the \$50.00 fee is common practice. The interest rate adjustment takes the landlord out of the position where she is paying the tenant more interest than she can earn herself.

03/20/07 Governor:
Approved by Governor-
Chapter 634 (effective
7/1/07)

Right to remove case to circuit court eliminated—H. Morgan Griffith (HB 2425). Eliminates the right to remove an action from the general district court to the circuit court. Requires an appeal bond to be posted within 30 days of judgment and, except in landlord tenant matters, does not require indigent persons to post an appeal bond. This is a very important bill. As presented by the patron, it would

eliminate removal, but the language relieving indigent persons from posting bond in certain types of cases was stricken in the Senate Courts of Justice Committee in spite of protests from us. We and others from the community have urged the Governor to propose restoring that language.

The Governor recommended that the following language be re-inserted into the bill, effectively returning it to the form offered by the patron.

"In all civil cases, except trespass, ejection or any action involving the recovering rents, no indigent person shall be required to post an appeal bond."

OTHER BILLS AFFECTING HOUSING

Landlord and managing agent immunity for mold claims—Terry G. Kilgore (HB 1789). Provides immunity for landlords and managing agents if they are in compliance with the Virginia Residential Landlord and Tenant Act. Managing agents can be held liable for affirmative acts of negligence. Any party who pleads a defense pursuant to this immunity shall be entitled to a hearing on the merits after limited discovery and before adjudication of the underlying claim.

Passed by in Courts of Justice with letter, passing it to the Housing Commission for study

Unlawful detainer actions: bad faith by tenant—Algie T. Howell, Jr. (HB 2244). Provides for a shorter period of time (10 days) for an initial hearing on an unlawful detainer action filed to terminate a tenancy pursuant

to the Virginia Residential Landlord Tenant Act, where the plaintiff makes a preliminary showing of bad faith by the tenant. Kathy Pryor suggested that the offending language be replaced by the following.

"If, after obtaining a judgment for possession based upon a summons for unlawful detainer filed to terminate a tenancy pursuant to the Virginia Residential Landlord Tenant Act (Section 55-248.2 et seq.), the landlord requests eviction by changing the lock pursuant to Section 55-248.38:2, the execution of the writ of possession by the sheriff should occur within 15 calendar days from the date the writ of possession is received by the sheriff; execution of the writ of possession shall otherwise be in accordance with 8.01-470 and 8.01-129."

The bill was stricken at the request of the patron in the Senate Courts of Justice Committee.

Fair housing law: unlawful discriminatory housing practice—David L. Englin (HB 2744). Adds source of income to the list of unlawful discriminatory housing practices. The bill defines source of income as any lawful income used by a person to meet his obligation to pay for the purchase or lease of a dwelling, including payment with (i) federal funds received pursuant to public housing or Section 8 programs of the United States Housing Act of 1937, as amended, (ii) funds received from assistance made available under Chapter 1.2 (§ 36-55.26 et seq.) of Title 35, or (iii) proceeds from a

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bequest, life insurance policy, annuity, or other like source.

The bill was stricken from the docket at House General Laws at the request of the patron. The patron received a lot of material listing other states, counties, etc. that had used source of income as a suspect classification and probably prefers a chance for the issue to be studied in detail.

Trespass: knowledge that entry was forbidden—Ken T. Cuccinelli (SB 1120). Provides that a person who goes or remains upon residential property or conspires to go or remain upon such property and who knows or reasonably should have known that any resident of such property suffered a substantial personal, physical, mental, or emotional loss, injury, or trauma within the week preceding the entry upon the property is guilty of trespass or conspiring to trespass, regardless of whether the lack of permission to enter the property was communicated to him. Under current law, a person is only guilty of trespass or conspiring to trespass if he has been forbidden, either orally, in writing, or by posted sign, from going onto or remaining on such property.

Senate: Left in Courts of Justice Committee.

Civil actions; docketing for trial—Richard L. Saslaw (SB 1009). Provides that civil actions, except domestic relations cases brought under Chapter 11 of Title 16.1 or under Title 20, cannot be set for trial for at least six months

after service of process is made on all defendants unless the parties to the action agree otherwise or good cause is shown that the trial should proceed at an earlier date.

Senate: Left in Courts of Justice Committee.

Purchase of real property by public bodies; survey of property required—Kenneth C. Alexander (HB 1658). Requires state and local public bodies whenever acquiring by purchase a fee simple interest in real property that exceeds \$100,000 to have a survey of the subject property completed prior to the purchase. Certain types of property are exempted.

Senate: Stricken at request of Patron in Local Government

Real estate tax; limitation on tax rate—L. Scott Lingamfelter (HB 1706). Provides that localities must set real estate tax rates so that the total real estate tax revenue will not increase by more than 3% over the previous year's total real property tax levies with one exception. The exception would allow a locality to set its property tax rate at a rate not to exceed the rate of population growth plus the rate of inflation in the locality for the immediately preceding year, but in no event shall the rate be set at any amount that would produce more than 6% growth.

02/06/07 House: Left in Finance

Classification of taxable real property—Kenneth C. Alexander (HB 1730). Permits localities to tax residential property at a

lower tax rate than that imposed on the general class of real property by creating a separate classification for taxation purposes. If a locality imposes a lower tax rate on residential property, then thereafter the locality shall not increase the rate of taxation on the general class of real property.

House: Left in Finance Committee

Real property tax exemptions; elderly and disabled—Robert G. Marshall (HB 1744). Increases the income limit for elderly and disabled taxpayers in certain Northern Virginia localities from \$72,000 to \$75,000 for real property tax exemptions.

03/13/07 Governor: Acts of Assembly Chapter text (CHAP0060)

Virginia Real Estate Time-Share Act; purchaser's right to surrender time-share—John A. Cosgrove (HB 1771). Sets forth the process by which an owner of a time-share may surrender ownership of his time-share.

House: Letter sent to Housing Commission

Housing authorities; use of eminent domain—Terrie L. Suit (HB 1824). Limits the power of housing authorities to acquire property within a conservation area through the use of eminent domain to those properties that are blighted.
House: Letter sent to Housing Commission

Housing Trust Fund—Terrie L. Suit (HB 1825). Provides that 50% of the annual revenue

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collection from the taxes and fees from the state recordation tax that are in excess of the official estimates for such taxes and fees, unless otherwise provided in the general appropriation act, shall be set apart in a permanent and perpetual fund to be known as the Virginia Housing Trust Fund. This bill is a recommendation of the Virginia Housing Commission.

House: Left in Appropriations

Condominium and Property Owners' Association Acts: cancellation notices; methods of delivery—Terrie L. Suit (HB 1871). Provides for electronic or facsimile delivery of cancellation notices by purchasers under prescribed conditions.

House: Incorporated by General Laws (HB2016-Suit)

Affordable dwelling unit ordinances—Terrie L. Suit (HB 2010). Makes numerous changes to the affordable housing law including authorizing establishment of housing trust funds and allowing acceptance of cash in lieu of affordable units.

03/21/07 Governor: Approved by Governor-Chapter 695 (effective 7/1/07)

Virginia Residential Property Disclosure Act—Terrie L. Suit (HB 2011). Amends the required residential property disclosure/disclaimer statement developed by the Real Estate Board by eliminating the disclaimer provisions. Under the bill, the statement will now be a disclosure statement and will contain the six minimum

disclosures, thereby conforming to actual usage, requiring the buyer to use due diligence. This bill is a recommendation of the Virginia Housing Commission.

Governor: Approved by Governor-Chapter 265 (effective 7/1/07)

Condominium and Property Owners' Association Acts: insurance; deposit of funds; charges for and delivery of resale certificates/disclosure packets—Terrie L. Suit (HB 2016). Requires any managing agent of a condominium and property owners' association to keep funds deposited with the managing agent in fiduciary trust accounts in a federally insured financial institution, and to keep such funds segregated from other assets of the managing agent. The bill also requires condominium associations to obtain a blanket fidelity bond or employee dishonesty insurance policy in a minimum amount of \$10,000. The bill allows condominium and property owners' associations to collect a fee for preparation of a resale certificate or disclosure packet, respectively, if the fee is established in the contract between the association and its managing agent and the fee is disclosed on the website of either the association or the managing agent. The bill requires the prompt payment of the above fee to the managing agent who furnishes the resale certificate/disclosure packet. The bill allows either type of association to deliver the resale certificate/disclosure packet by electronic means unless the purchaser or seller requests a paper copy. Currently, delivery by

electronic means can only be done with the consent of the seller or purchaser. The bill contains technical amendments. The bill is identical to SB 844.

03/21/07 Governor: Approved by Governor-Chapter 696 (effective 7/1/07)

Clustering—C. Todd Gilbert (HB 2325). Defines several key terms in the existing clustering statute that requires most localities to designate a portion of unimproved land as eligible for clustering of single-family dwellings. Also, "unimproved land" shall apply to residentially zoned land only, rather than residential and agricultural land.

House: Left in Counties, Cities and Towns

Clustering of single-family dwellings—C. Todd Gilbert (HB 2326). Makes the clustering provisions that are slated to become effective July 1, 2007, optional, rather than mandatory.

House: Left in Counties, Cities and Towns

Clustering of single-family dwellings—C. Todd Gilbert (HB 2327). Exempts certain agricultural counties from provisions that require most localities to designate certain areas for potential clustering of single-family dwellings.

House: Left in Counties, Cities and Towns

Affordable dwelling unit ordinances—David J. Toscano (HB 2451). Makes numerous changes to the affordable housing law including

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authorizing establishment of housing trust funds and allowing acceptance of cash in lieu of affordable units. This bill was incorporated into HB2010.

House: Incorporated in Counties, Cities and Towns (HB2010-Suit)

Affordable housing dwelling unit ordinances—Lionell Spruill, Sr. (HB 2910). Provides that a local governing body may establish a housing fund, the purpose of which will be to assist nonprofit organizations to develop or preserve affordable housing for low- and moderate-income persons and families. This bill was incorporated into HB2010.

House: Incorporated in Counties, Cities and Towns (HB2010-Suit)

Real property tax exemptions for elderly and disabled; indexing income limits—Thomas D. Gear (HB 2641). Requires indexing the income limits annually based on the percentage change in the Consumer Price Index for All Urban Consumers for purposes of the real property tax exemptions for elderly and disabled.

House: Left in Finance

Grants for home ownership—Katherine B. Waddell (HB 2834). Raises from \$5,000 to \$25,000 the amount that localities may provide for home ownership grants for certain local government employees. Any such grants shall be subject to certain sales price and income limitations. This bill incorporated HB2841 and

HB3121.

03/20/07 Governor: Approved by Governor-Chapter 674 (effective 7/1/07)

Grants for home ownership—John M. O'Bannon, III (HB 3121). Raises from \$5,000 to \$25,000 the amount that localities may provide for home ownership grants to employees of the locality to purchase their primary residences in the locality. This bill was incorporated into HB2834.

House: Incorporated in Counties, Cities and Towns (HB2834-Waddell)

Grants for home ownership—Franklin P. Hall (HB 2841). Increases the maximum amount authorized for individual home ownership grants from \$5,000 per local government employee to \$15,000 per local government employee. The bill also increases the maximum amount authorized for lifetime, cumulative home-ownership grants from \$5,000 per local government employee to \$15,000 per local government employee. This bill was incorporated into HB2834.

House: Incorporated in Counties, Cities and Towns (HB2834-Waddell)

Real property tax; exemption for elderly and disabled—Lionell Spruill, Sr. (HB 2909). Allows localities to grant higher percentages of tax relief to the elderly based on increasing age, especially for those who are 75 years of age and older.

House: Left in Finance

Study; affordable housing for

the work force—Kristen J. Amundson (HJ 705). Directs the Virginia Housing Commission to study the availability of affordable housing for the work force and the types of initiatives and incentives used in other states to provide such housing. It is a one-year study.

House: Left in Rules

Affordable housing dwelling unit ordinances—Frederick M. Quayle (SB 955). Provides that localities that adopt a program of bonus density in exchange for affordable housing will be allowed certain incentives and that the program may also apply to certain elevator structures above four stories except for localities in Planning District Eight. Also, such program may include establishment of a local housing fund to help the locality achieve its affordable housing goals. This bill is identical to HB2010. This bill incorporates SB1131.

03/21/07 Governor: Approved by Governor-Chapter 713 (effective 7/1/07)

Virginia Housing Partnership Trust Fund; dedicating unreserved general fund balances—Mary Margaret Whipple (SB 966). Changes the name of the Virginia Housing Partnership Revolving Trust Fund to the Virginia Housing Trust Fund. The bill provides for 10% of any unreserved general fund balance at the close of each fiscal year whose reappropriation is not required in the general appropriation act and 10% of any unreserved general fund

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balance at the close of each fiscal year whose reappropriation is not required in the general appropriation act to be transferred to the Fund. The bill also provides that a portion of the fund shall be used to provide matching funds to localities that have both established a local housing fund and appropriated local moneys to the fund. Under the bill, the Department of Housing and Community Development is required to establish criteria for the allocation of the matching funds to eligible localities and to annually report on the allocation of matching funds. In addition, the bill authorizes grants to be made from the Fund to support innovative housing projects and low- and moderate-income housing projects that are located in areas experiencing extreme shortages of such housing.

Senate: Failed to report (defeated) in Finance

Virginia Housing Trust Fund; dedicating recordation tax revenues—Mary Margaret Whipple (SB 967). Changes the name of the Virginia Housing Partnership Revolving Trust Fund to the Virginia Housing Trust Fund. The bill provides for \$0.02 of the recordation tax to be transferred to the Fund. The bill also provides that a portion of the Fund shall be used to provide matching funds to localities that have both established a local housing fund and appropriated local moneys to the fund. Under the bill, the Department of Housing and Community Development is required to establish criteria for the allocation of the

matching funds to eligible localities and to annually report on the allocation of matching funds. In addition, the bill authorizes grants to be made from the Fund to support innovative housing projects and low- and moderate-income housing projects that are located in areas experiencing extreme shortages of such housing.

Senate: Failed to report (defeated) in Finance

Virginia Condominium Act; conversion of condominium sales—Mary Margaret Whipple (SB 968). Allows for a condominium conversion tenant who is disabled or elderly to assign his right to purchase to a government agency, housing authority, or certified tax exempt, nonprofit housing corporation. This bill is a recommendation of the Virginia Housing Commission.

03/20/07 Governor: Approved by Governor-Chapter 602 (effective 7/1/07)

Condominium and Property Owners' Association Acts; display of flags—Mary Margaret Whipple (SB 969). Provides that no condominium instrument or declaration shall restrict or prohibit the display by a unit or lot owner of the flag of the United States. The bill provides, however, that an association may restrict the display of such flag in the common areas and may establish reasonable restrictions as to the time, size, place, duration, and manner of placement or display. The bill also requires the public offering statement, resale certificate, or association disclosure packet to contain a statement of any restrictions on time, size,

place, duration, and manner of placement or display of the flag. The bill is identical to HB 1836.

03/26/07 Senate: Governor's recommendation received by Senate

Mortgage loan servicing; penalties—R. Creigh Deeds (SB 989). Prohibits servicers of mortgage loans from taking certain actions pertaining to the servicing of such loans, including failing to apply payments to the loan and taking actions for the primary purpose of creating a default under the terms of a mortgage loan. The Bureau of Financial Institutions of the State Corporation Commission is given authority to investigate and enforce the provisions under the Mortgage Lender and Broker Act; although mortgage servicers are not required to obtain licenses under that Act.

Senate: Left in Commerce and Labor

Eminent domain; economic development—Jay O'Brien (SB 1037). Provides that in any instance in which a condemnation is economic development, a locality shall demonstrate that the condemnation is related to the redevelopment of an area that is at least two-thirds blighted. This bill has been incorporated into SB 781.

Senate: Incorporated by Courts of Justice (SB781-Cuccinelli)

Public uses; eminent domain—Ken T. Cuccinelli, II (SB 781). Defines the term "public uses" as embracing

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only the acquisition of property where (i) the land is taken for the possession, occupation and enjoyment by the public or a public corporation; (ii) the land is taken for construction, maintenance and operation of public facilities by public corporations or by private entities provided that there is a written agreement with a public corporation providing for the use of the facility by the public; (iii) the land is taken for the creation or functioning of a public service corporation, public service company, or railroad; (iv) the land is taken for the provision of utility services by a government utility corporation; (v) the land taken is blighted and is taken for the elimination of blight; and (vi) the property is taken in a redevelopment or conservation area that is abandoned or the acquisition is needed to clear title where one of the owners agrees to such acquisition. The bill also states that property can only be taken when the public interest dominates the private gain and the primary purpose is not private financial gain, private benefit, an increase in tax base or revenues, or an increase in employment, except if the property is taken for the creation or functioning of a public service corporation, public service company, or railroad, or for the provision of authorized utility services by a government utility corporation. The bill defines the terms "blighted property," "government utility corporation," "public corporation," and "public facilities." The bill also provides that a property owner may challenge that a taking is a pretext for an

unauthorized use. A former property owner, or his successors, may also request to repurchase the taken property upon the completion or abandonment of the stated public use. The bill does not apply to the forfeiture of property in connection with criminal act or real property that is subject to a certificate of take or deposit recorded prior to July 1, 2007. The bill also does not affect the ability of a redevelopment and housing authority to acquire property under a plan adopted prior to January 1, 2007 until July 1, 2010. This bill incorporates SB 1037 and SB 1096. This bill is identical to SB 1296 and HB 2954.

03/26/07 Senate: Governor's recommendation received by Senate

Eminent domain; definition of public uses—Mark D. Obenshain (SB 1096). Provides a definition of the term "public uses" mentioned in Article I, Section 11 of the Constitution of Virginia and specifies certain exceptions to this definition, including when the taking of land is for the primary purpose of (i) conferring financial gain on a private person, (ii) enhancing tax revenues, or (iii) furthering economic development or employment. The bill also clarifies that if the property to be taken is used in connection with the operation of a business, any business losses incurred must be included in determining just compensation and any damages for the landowner. The bill also provides that the power of eminent domain can only be used to take property to eliminate blight if the property in question is in fact blighted and serves to endanger the public health,

safety, or welfare. The bill also provides that a landowner may be awarded reasonable costs, including attorney and appraisal fees, if the amount of just compensation and damages awarded to a landowner exceeds the amount of the final written offer made by the petitioner. Current law only permits an award of reasonable costs if the amount of just compensation and damages is 30 percent more than the amount of the final written offer and does not permit an award of attorney fees. This bill has been incorporated into SB 781.

Senate: Incorporated by Courts of Justice (SB781-Cuccinelli) (15-Y 0-N)

Real estate tax relief for the elderly and permanently and totally disabled—Mark R. Herring (SB 1265). Authorizes local governments to extend real estate tax relief to dwellings jointly held between individuals not all of whom are at least age 65 or permanently and totally disabled. The tax relief would be prorated based upon the percentage of ownership interest in the dwelling held by all joint owners who are at least age 65 or permanently and totally disabled. As a condition of the property qualifying for real estate tax relief, the bill establishes additional net worth thresholds that cannot be exceeded. The additional net worth thresholds would not allow any exclusion for the dwelling in question.

03/21/07 Governor: Acts of Assembly Chapter text (CHAP0357)

2007 GA Unemployment & Minimum Wage Legislation Summary

By Ty Jones, Virginia Poverty Law Center

The following bill was signed by the Governor and will take effect on July 1st.

Unemployment

Compensation increases the maximum weekly benefit—(HB 2066).

This bill increased the maximum weekly benefits from \$347 to \$363 for claims effective on or after July 1, 2007.

The following bill was tabled in House Commerce and Labor committee

Unemployment

Compensation; excludes temporary staffing—(HB 2865). This bill would exclude services provided by an individual in the employ of a temporary staffing service from the definition of “employment” for purposes of unemployment compensation.

MINIMUM WAGE

I also followed the big minimum wage fiasco. The following is a list of the bills and the actions that were taken which led to their ultimate demise.

The following bills were left in the House Commerce and Labor Committee where they died:

HB 1634, HB 1651, HB 1654, HB 2004, HB 2508, HB 2849, HB 2873, & HB 3054

Each of these bills proposed to increase the minimum wage from its current rate of \$5.15 to up to \$8.15 on some bills.

The following bill made it out of the House Commerce and

Labor Committee only to be defeated by a motion by Representative Morgan Griffith to refer to Appropriation Committee where it was left as the Committee was no longer meeting.

Minimum wage, increase per hour—Senator Colgan (HB 1327). This bill would increase the minimum wage from its current federally mandated level of \$5.15 per hour to \$6.50 per hour effective July 1, 2007, unless a higher minimum wage is required by the federal Fair Labor Standards Act. The act will expire at such time as the federal minimum wage equals or exceeds \$6.50 per hour. This bill incorporated SB 766 and SB 1277.

The following is a break down of the vote. In this instance the ‘Yeas’ are actually votes to kill the bill.

YEAS—Abbitt, Albo, Athey, Bell, Byron, Carrico, Cline, Cole, Cosgrove, Cox, Dudley, Fralin, Frederick, Gear, Gilbert, Griffith, Hamilton, Hargrove, Hogan, Hugo, Hurt, Iaquinto, Janis, Jones, S.C., Kilgore, Landes, Lingamfelter, Lohr, Marshall, D.W., May, McQuigg, Miller, J.H., Morgan, Nixon, Nutter, O'Bannon, Oder, Orrock, Peace, Purkey, Putney, Rapp, Reid, Saxman, Scott, E.T., Sherwood, Suit, Tata, Wardrup, Ware, R.L., Welch, Wright, Mr. Speaker--53.

NAYS—Alexander, Amundson, Armstrong, BaCote, Barlow, Bowling, Brink, Bulova, Callahan, Caputo, Dance, Ebbin, Eisenberg, Englin, Hall, Howell, A.T., Hull, Ingram, Joannou, Jones, D.C., Lewis, Marsden, McClellan, McEachin, Melvin, Miller, P.J.,

Moran, Phillips, Plum, Poisson, Rust, Scott, J.M., Shannon, Shuler, Sickles, Spruill, Toscano, Tyler, Valentine, Waddell, Ward, Ware, O., Watts--43.

NOT VOTING—Crockett-Stark, Johnson, Marshall, R.G., Wittman--4.

2007 General Assembly Public Benefits Summary

By Jill Hanken, Virginia
Poverty Law Center

MEDICAID

HB 1953 Burial funds - Authorizes certain incorporated associations authorized to sell burial association group life insurance certificates to serve as the trustee of a trust established to fund a preneed funeral contract.

HB 3138 –Conforms DMAS' third party liability procedures to the requirements of the federal Deficit Reduction Act of 2005.

HB 3188 –Requires DMAS to utilize, to the extent practicable, electronic funds transfer technology for reimbursement to contractors and enrolled providers.

HJ 657 –Encourages DMAS to expand the use of managed care to new regions of the state and additional eligibility groups.

CHILDREN'S HEALTH

HB 2035 - Requires girls entering 6th grade to begin the three dose regimen of human papillomavirus (HPV) vaccine. Parents / guardians may opt out of this requirement. Not effective until October 1, 2008.

HB 2214/ SB 974 – State Health Commissioner and Superintendent of Public Instruction shall coordinate efforts to combat childhood obesity and other chronic health conditions that affect school-age children.

HB 2299 – Eliminates FAMIS quarterly reports.

HB 2377 –Removes the requirement that an applicant

for a license to practice dentistry has not failed a required clinical examination within the previous 5 years.

HB 2994 – Authorizes dental hygienists to administer topical oral fluorides pursuant to an oral / written order or standing protocol issued by a dentist/doctor.

HJ 637 –Establishes a joint subcommittee to study childhood obesity in Virginia's public schools.

HJ 726 –Designates the third week in September as Healthy Virginians/Healthy Students Week in Virginia.

SB 738 –Specifies who may preside over involuntary commitment hearings of minors over 14 and requires them to receive specified training.

SB 944 – Allows DCSE to obtain medical support from either or both parents. Requires that, prior to referrals to FAMIS, DCSE must confirm that neither parent has access to employer based health insurance for the child.

SB 1060 –Increases from 5 to 8 the age of children who must be secured in car-seats; strengthens requirements for rear-facing child restraints and restraints in cargo areas.

SB 1088 / HB 3183 - Requires practitioners who provide prenatal care to give information / support services to patients receiving a positive test diagnosis for Down Syndrome or other prenatally diagnosed conditions. Also creates the "Virginia Pregnant Women Support Fund" to support women/ families facing an unplanned pregnancy.

SB 1332 – To avoid custody relinquishment, targets funding for mental health services for children needing CSA services. Must be reenacted in 2008.

LONG TERM CARE

HB 2032 – Expands scope of long-term care services overseen by Dept. for Aging to include transportation, education, housing, self-care and independent living.

HB 2033 / SB 1024 – Secretary of Health and Human Resources shall serve as the lead Secretary for the coordination and implementation of the long-term care policy of the Commonwealth, working with the Secretaries of Transportation, Commerce and Trade, and Education, and the Commissioner of Insurance.

HB 2290 –DMAS shall establish a Nursing Facility Quality Improvement Program to improve the health, safety, and welfare of residents in nursing facilities.

HB 2624 –All state agencies must report to the Department for the Aging each year to report on progress addressing the impact of the aging population.

SB 790 – Caregiver grant – revises income eligibility for the grant and allows relatives and guardians to apply.

DSS/TANF

SB 806 – Food distribution - Charitable organizations engaged in food distribution programs for needy persons are exempt from state/ local

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laws governing food service and preparation. They may also accept food prepared by unlicensed facilities.

COPN

HB 1992 – Under certain conditions, allows nursing homes to relocate beds from one facility to another facility under common ownership without a COPN.

HB 2546- Increases the amount of capital expenditures that are not subject to COPN from \$5 to \$15 million.

MISCELLANEOUS HEALTH

HB 2037 – Medical Assistants - Authorizes certain personnel to administer controlled substances under certain conditions.

HB 3043 – Minority Health - Requires the Health Commissioner to designate a physician to oversee minority health efforts of the Department.

HB 3137 – Expedited review of insurance denial – Establishes a one-day expedited review process for patients with terminal illnesses.

HJ 683 – Substance Abuse - Directs JLARC to study the costs of substance abuse and determine possible savings by providing treatment to offenders diverted from incarceration.

SB 1193 & SB 1251 – Directs Substance Abuse Services Council to review all state agency substance abuse treatment programs.

SB 1207 – Allows criminal background checks of providers of adult foster care, home-based services, and other emergency, temporary, or permanent placements.

SB 1208 – Strengthens criminal background check requirements for employees, volunteers, and providers of contractual services to children's residential facilities.

SB 1225 – Women's health - Requires the Health Commissioner to designate a physician to coordinate all women's health efforts in the Department.

SB 1305/ HB 2087 – Physical therapists - Allows patients to directly seek treatment from licensed physical therapists (without a referral) when certain conditions are met.

SB 1374/ HB 3131 - Requires the Secretary of Health and Human Resources to coordinate the disease prevention activities of agencies in the Secretariat.

SJ 395 – Substance abuse - Directs JLARC to study the impact of issues related to substance abuse on state and local fiscal expenditures.

TAXES

HB 2498 – Provides home accessibility tax credit for new residences or retrofitting of existing residences. Guidelines to be developed by the Department of Housing and Community Development.

HB 3022 / SB 778 – Gradually raises income tax filing thresholds. In 2012 threshold will be \$11,650 (single) and \$23,900 (married couples). Also raises personal tax exemption for all

taxpayers by \$30, beginning 2008.

IMMIGRATION

HB 1673 – Creates the Virginia Commission on Immigration as an advisory commission in the executive branch to complete studies and make recommendations.

HB 2471 – DMV shall not require documentation of legal presence for the issuance of a special ID card when the applicant was born in or before 1937 and, within the past 5 years, he had a valid Virginia driver's license or special ID card.

GOVERNMENT PROCEDURES

HB 1791 – FOIA – Adds to and clarifies appropriate responses to requests for public records under FOIA. The bill also contains technical amendments.

HB 2537/ SB 1139 – Administrative Process Act- Provides for use of the Regulatory Town Hall; clarifies the procedures for emergency regulations; changes the venue for informal fact finding proceedings and formal hearings; and amends provisions relating to fast track rulemaking, DPB fiscal impact statements, and other technical amendments.

HB 2758 – FOIA - Clarifies where meeting notices and minutes of state public bodies must be posted.

HB 3097 - FOIA - Protects personal information in constituent correspondence.

SB 1183 – False Claims Act – Makes numerous procedural changes, including limitations

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2007 General Assembly Public Benefits Summary

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on actions and penalties.

Budget Highlights

HHR SECRETARY

278 #1c-Feasibility report by the HHR Secretary on the portability of Auxiliary Grants for consumer cases managed by CSBs. Report due by 12/1/07

278 #2c-Directs Secretary of HHR and related agencies to streamline verification of citizenship to assist consumers in obtaining needed services.

278 #4c-Directs Secretary of HHR and related agencies to examine the feasibility of transferring adult services and licensure of adult services from DSS to VDA (Aging). Report by 12/1/07.

COMPREHENSIVE SERVICES ACT

279 #1c-Report on the needs and adequacy of services and funding for non-mandated children. Report due 10/31/07

279 #2c-Report on the impact of SB 1332. Report should assess the numbers of children at risk of custody relinquishment, the mental health services needed by these children and the costs of the services. Report due 11/1/07.

FAMIS

301 #1c- Increases FAMIS Moms eligibility from 166% FPL to 185% FPL

MEDICAID

302 - NH personal needs allowance increased to \$40/

mo.

302 #6c-Medicaid-reimbursed services for substance use disorders.

302 #7c - Instead of the targeted 7% increase for pediatric services in the Governor's budget, the legislature adopted a 2% across-the-board increase for all physician services. Added to the 8% increase that pediatric services received last year, this amounts to a total 10% increase for pediatric services in July 2008.

302 #8c-15% Increase for MR and DD Waiver rates for Northern Virginia Differential.

302 #10c-Additional 100 DD Waiver slots to be phased-in.

302 #11c-160 additional MR Waiver slots to be phased-in through the coming year. This brings the total to 330 MR Waiver slots in the 07-08 budget year.

DMHMRSAS

Behavioral Health Workforce -funding in the Governor's budget for fellowships for child psychiatrists and internships for child psychologists who commit to work in underserved areas.

311 #2c-Continues review of MR Services and expands study to all MR services with a report to be presented by 10/1/07.

312 #1c-Pilots for geriatric systems of care in two regions, including Northern Virginia. Funding to be re-directed from MH Block Grant Funds.

312 #2c-Pilots for consumer-

operated programs. Funding to be re-directed from the MH Block Grant.

312 #4c-Children at risk of custody relinquishment to be given priority by CSB/BHAs for funding for non-mandated youth.

312 #5c-Expand services for substance use disorders for youth and adults

312 #7c- Start up funds for 330 MR Waiver slots

312 #8c-Mental health services in nine detention centers

321 #1c-Two new Regional Community Support Centers, SEVTC and SSVTC

327 #1c-Adds \$200,000 to services for brain injury.

DEPARTMENT OF SOCIAL SERVICES

Funding for TANF changes

337 #1c-Adds \$200,000 to the Caregiver Grant Fund

337 #2c-Increases maximum state share for Auxiliary Grants to \$1,061 per month

- \$3 million to increase maintenance payments made to foster family homes and special needs adoption homes by 10%. Maintenance payments are the financial subsidies paid to families to support their care for a foster or special needs adoptive child.

Senator Introduces Bill to Ease Debt Burden on Legal Aid Attorneys

By Legal Services Corporation

On April 19, Senator Tom Harkin (D-IA) introduced S. 1167, the "Legal Aid Attorney Loan Repayment Act," to help ease the often-staggering educational debt burdens of civil legal aid attorneys.

In general, Harkin's bill would provide up to \$6,000 a year in loan repayments to attorneys employed full-time

in civil legal aid organizations. Applicants would be accepted on a first-come, first-served basis, subject to the availability of appropriations. The bill authorizes an appropriation of \$10 million for the program in FY 2008.

"This important legislation is critical to ensuring that basic civil liberties are protected for all of our citizens," said Harkin while introducing the bill. "Our

promise of 'equal justice under law' rings hollow if those who are most vulnerable are denied access to representation. Legal Aid attorneys across the country protect the safety, security, and health of low-income citizens."

The bill will now go to the Committee on Health, Education, Labor and Pensions to await action.

Anne See Receives 2007 Elder Rights Award

By Kathy Pryor, Virginia Poverty Law Center

Anne See is the 2007 recipient of the Elder Rights award, given annually by the Virginia Elder Rights Coalition (VERC) to someone who has made an outstanding contribution in service to older Virginians. The award was presented at the Virginia Guardianship Association/VERC annual conference on April 24th by Erica Wood, of the ABA's Commission on Law and Aging and a founding member of VERC. In presenting the award, Erica highlighted some of Anne's many accomplishments over the last 28 years while she has served as a Public Benefits and Elderly Services Paralegal, first with the Valley Program for Aging Services and, for the last 18 years, with Blue Ridge Legal Services. Anne's most significant accomplishments include being instrumental in obtaining a toll free Adult Abuse Reporting Hotline in Virginia; organizing and leading the Friends and Relatives of Nursing Home Residents citizen advocacy group in Harrisonburg—that group's advocacy led to the reorganization of the

ombudsman program in Virginia; testifying before the Senate Select Committee on Aging in 1995 in support of the Nursing Home Reform Act; handling numerous administrative hearings that have resulted in new, clarified or changes to federal and state policy manuals; helping 3 localities start local TRIAD programs; helping to organize the Harrisonburg-Rockingham Representative Payee Program; helping to organize a tenants' association for an apartment complex for the elderly; helping lay the groundwork for three federal class action suits involving Medicaid; educating, either collegially or adversarially as necessary, nursing home staff on residents' rights and DSS eligibility workers on issues involving the elderly and public benefits.

John Whitfield, who is the Executive Director of Blue Ridge Legal Services and Anne's boss and who was present to see Anne receive the award, was quoted as saying "Anne has been the heart and soul of BRLS' advocacy on behalf of the elderly for the last 28 years. Anne has consistently been our most zealous advocate

over these 28 years, and undoubtedly the most knowledgeable person in the Shenandoah Valley on legal issues involving low-income elderly. Because of these outstanding qualities, she has achieved truly amazing results for hundreds of clients over the years, cases that will never get reported in any legal periodical, but which were life-saving for the clients involved."

In making the presentation, Erica Wood also quoted comments from other advocates who have worked with Anne over the years: "Anne is recognized as an expert on nursing home issues, Medicaid, Medicare, and other elder law issues, and is generous in sharing her expertise with other less-experienced advocates. In addition to working with countless individual clients, she has worked for broader systemic change when that coincided with individual client needs."

"Anne is a legal advocate with extraordinary talent and skill. What distinguishes Anne is her depth of knowledge, her

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Anne See Receives 2007 Elder Rights Award

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compassion for and dedication to her clients, her attention to detail, and her stubborn determination to get mistakes corrected. She has argued with DSS about a \$10 mistake on a Medicaid spend-down calculation; she has dragged DMAS hearing officers to cow pastures to evaluate property exemptions;

she has discovered many technical mistakes in Virginia policies and then persisted for months or even years to get them fixed. She engages with her clients in a very personal way, showing genuine respect for them as individuals and supporting their independence whenever possible. Her efforts and successes over the past 25+

years demonstrate her passion for hard work and the clients she serves." Congratulations to Anne for her passionate dedication to her clients and her work, for her years of tireless and effective advocacy on behalf of elderly clients, and for receiving this well-deserved award!

News From the 2007 Equal Justice Conference

By Legal Services Corporation

On March 22-24, the American Bar Association and the National Legal Aid and Defender Association (NLADA) co-hosted the 2007 Equal Justice Conference in Denver, Colorado. At the annual conference, LSC shares its accomplishments and discusses other issues of importance with a diverse cross section of the civil legal services community, including staff of *pro bono* and legal services programs, judges, corporate counsel, court administrators, private lawyers, paralegals, and others. The primary focus of this year's conference was celebrating the collaboration of *pro bono* and legal services, and exploring opportunities for additional partnerships.

This year, LSC staff participated in a number of workshops at the conference, including a "Hot Topics in Legal Aid" session featuring LSC President Helaine M. Barnett and others. The workshop focused on developments at LSC, LSC's

funding outlook for FY 2008, private attorney involvement initiatives, and other issues of interest.

Another highlight was a workshop on LSC's Private Attorney Involvement Action Plan, facilitated by a number of staff from LSC's Office of Program Performance (OPP). Participants engaged in a positive and constructive discussion about ways to increase the participation of *pro bono* attorneys in the delivery of legal services to clients of LSC-funded programs. Participants also shared their thoughts and suggestions on a proposed LSC program letter on enhancing *pro bono* involvement with LSC grantees.

LSC staff participated in many other workshops with a variety of themes, including program quality, disaster relief, technology, and issues facing legal services providers in rural areas and the Deep South.

The conference also gave LSC an opportunity to unveil its

redesigned Resource Library website, available at www.lri.lsc.gov. The redesigned site features a new "Private Attorney Involvement" section containing information aimed at helping LSC-funded programs expand and develop new and creative ways to increase private attorney involvement.

2007 General Assembly Family Law Summary

By Christie Marra, Virginia Poverty Law Center

PASSED:

The following bills passed both the House and the Senate, have been signed by the Governor and will become effective July 1, 2007.

At-risk Youth

Del. Marsden (HB 3007). Amends the code to require that a juvenile be *convicted* as an adult in order for that juvenile to be treated as an adult for all alleged future criminal acts. Current law allows a juvenile to be forever treated as an adult if he is merely *tried* as an adult one time. The new law will allow juveniles who are tried as adults but acquitted to be tried as juveniles for future alleged offense.

Sen. Davis (SB 1332). Adds to the list of children who are "mandated" to receive services funded through the Comprehensive Services Act those children who have serious mental health issues, require treatment that is not covered by private insurance or Medicaid (upon initial evaluation) and for whom mental health treatment is required to avoid placement in foster care. The law will not go into effect unless re-enacted by the 2008 General Assembly. This is because the current budget does not have funding for these expanded services, and there will be an effort to get such funding included in the 2008-2009 budget.

Foster Care/Adoption

Transportation money: The budget includes \$150,000 for the Department of Education to provide

transportation to school for foster youth who live in a foster care placement outside their school district. This money addresses the gap left after SB 1006 was passed two years ago. Under SB 1006, students in foster care can stay in their current school even if they move to a new foster care placement that is outside their current school district.

Del. Toscano (HB 2504). Clarifies and strengthens the background check requirements for individuals requesting to be approved as foster or adoptive parents.

Sen. Stolle (SB 1168). Increases the limits for fees paid to counsel appointed to represent indigent defendants. For cases tried in juvenile and domestic relations district court, the fee is currently capped at \$120 per case; this bill raises that cap to \$240 per case. These fee caps apply to attorneys appointed to represent indigent parents in abuse/neglect/foster care cases. In those cases, the attorney is paid up to the maximum amount for each final order, and I believe there are five final orders. SB 1168 also allows counsel for indigent defendants to request a waiver of the fee cap. Such request must be made in writing to the presiding judge and be accompanied by a detailed account justifying the fee claimed.

Spousal Support

Sen. Quayle (SB 948). Requires juvenile and domestic relations court judges to use a formula set out in the bill to arrive at a presumptive amount of pendent lite spousal support.

Judges can deviate from the presumptive amount for good cause shown, including evidence relating to the financial circumstances of the parties. The formula applies only to those cases where the parties' combined monthly gross income does not exceed \$10,000.

Protective Orders

Del. Fralin (HB 1738). Requires a magistrate who finds that a warrant for assault and battery upon a family or household member has been issued or issues such a warrant presume that there is probable danger of further acts of abuse when considering whether to issue an emergency protective order.

Del. Shannon (HB 2576). Allows a court to extend a preliminary protective order when the respondent was not personally served prior to the initial hearing on the preliminary protective order (ie the "fifteen day hearing"). The extended order can be issued without the petitioner filing a new petition or giving new evidence. The court can extend the PPO for up to six months. Like the original PPO, this extended version must be served on the respondent as soon as possible.

Del. Marsden (HR 2646). Requires that when a magistrate issues an emergency protective order, he or she must provide the following to the victim or law enforcement officer seeking the EPO: the form used in filing petitions for protective orders in court under 16.1-253.1 and written information regarding protective orders (including the telephone numbers for

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2007 General Assembly Family Law Summary

(cont'd from pg. 29)

domestic violence agencies and legal referral sources). The law enforcement officer may, in turn provide these forms to the protected person.

Child Support

Sen. Quayle (SB 944). Puts current DCSE practice into Code by requiring that DCSE confirm that neither parent has access to health care coverage before referring the dependent children to FAMIS. It also clarifies that any order established by DCSE must include a statement requiring the parents to keep DCSE informed about access to health insurance. The current statute simply requires the obligor to do this. Again, this just puts current DCSE practice into Code.

Sen. Quayle (SB 945). Requires all employers with at least 100 employees and all payroll processing firms with at least 50 clients to send child support payments through electronic fund transfer.

Del. Iaquinto (HB 2528). Makes child support payments received expressly exempt from creditor garnishment.

Failed

SB 737 would have repealed the law making mental health records of a parent or parent's relatives inadmissible in a custody case without the prior written consent of the parent.

HB 2711 would have made leaving a child under age 6 in a car unattended a civil offense (1st offense), a Class 4 misdemeanor (2nd offense)

and a Class 3 misdemeanor (3rd offense).

HB 2146 would have made leaving a child under 6 in a car unattended a Class 1 misdemeanor.

HB 2728 would have created a presumption that a parent convicted of assaulting a child should get supervised visitation.

HB 2056 would have mandated the creation of parenting plans in contested custody cases.

HB 1662 would have required consideration of marital fault (ie divorce grounds) in determination of child custody.

HB 2957 would have created a presumption favoring joint physical custody.

SB 1036 would have allowed a court to order visitation by electronic means in custody or visitation cases.

HB 1661 would have expanded the definition of adultery.

HB 1660 would have expressly allowed parties to agree in a premarital agreement to eliminate the availability of divorce by no-fault grounds or lengthen the waiting period.

HB 1663 would have allowed exercising one's constitutional rights to be used against a party in a domestic relations case.

HB 1664 would have allowed fault to be used as a factor in equitable distribution.

HB 2798 would have required the court to deny a

no-fault divorce to parties with minor children if one party filed a written objection.

HB 2862 would have added to the grounds for a divorce from the bond of matrimony a conviction for A&B on a family or household member or violation of a protective order.

HB 2987 would have required the Department of Social Services to draft regulations prohibiting smoking where foster children live or in cars transporting foster children.

HB 2932 would have required proof of the immigration status of a child within 30 days of when that child was enrolled in school.

HB 2337 would have made it a felony for pregnant women to ingest a Schedule I/II drug.

HB 3020 would have established a scholarship fund for youth who were in foster care on their 18th birthday with scholarships to be used to attend two year or four year colleges.

SB 1178 would have made DJJ records available to law enforcement, school administration and others without a court order.

HB 2511 would have eliminated wage withholding orders for child support.

HB 2568 would have allowed a court to order probation rather than confinement for non-payment of support.

SB 928 would have mandated termination of parental rights when certain circumstances exist.

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2007 General Assembly Family Law Summary

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SB 929 would have allowed termination of parental rights when the parent is incarcerated when a child is less than a year old and will be incarcerated for more than

one year and would have allowed termination of parental rights of the TPR petition is filed before the child is a year old and two or more children of the parent are in state custody because

of abuse or neglect.

HB 1726 would have allowed mutual enforcement of protective orders.

2007 GA Immigrant Rights/Multiculturalism Legislation Summary

By Cristina Rebeil, Virginia Poverty Law Center

The following bills passed which had positive effect:

Discrimination & injustice: General Assembly to acknowledge and express regret for Virginia's role in—two separate bills: Henry L. Marsh, III (SJ 332), and A. Donald McEachin (HJ728). Resolutions acknowledging involuntary servitude of Africans, the exploitation of Native Americans, and calling for reconciliation among Virginians. This was a truly successful effort which entailed reaching out to organizations and individuals of diverse ethnicities and faiths. The following organizations and individuals graciously permitted VPLC to be mentioned as an endorsing organizations of both bills when we lobbied or testified about those bills. Both Senator Marsh and Delegate McEachin, as well as Delegate Englin, the Black Caucus, and Native American Chief Kenneth Addams and Chief Stephen Adkins, expressed being deeply moved and supported by VPLC's support.

Endorsing organizations were: ACLU of Virginia, Defenders for Justice, Freedom & Equality, Diverse Organization of Ethnicities, Hispanic Soccer League (Winchester, Harrisonburg, Charlottesville, Richmond and Virginia

Beach), Jewish Relations Council of Greater Washington, Latinos Unidos de Richmond (United Latinos of Richmond), Legal Aid Justice Center, MADRE TIERRA (Latina Women's Association of Virginia), Mexicanos Sin Fronteras (Mexicans Without Borders), Sikh Coalition, Virginia Chapter of League of United Latin American Citizens (LULAC), Virginia Coalition of Latino Organizations (VACOLAO), Virginia Justice Center for Farm and Immigrant Workers, Virginia Muslim Coalition, Virginia Organizing Project, Virginia Poverty Law Center, and Woodbridge Workers' Committee.

Endorsing Individuals were: Rev. Julio Avila, Pastor of Hispanic Baptist Church (Henrico); Tanya Gonzalez; Rev. Dr. William J. Johnson, Pastor New Prospect Family Praise and Worship Center; Allen F Layman, President, UE 160-Virginia Public Service Workers Union; Rev. Keith D. Manuel, Pastor of Gospel Baptist Church; and Rev. Luis Orsatti, Pastor of First Baptist Latino Church Monte Calvario (Richmond).

Extortion by withholding document- H. Morgan Griffith (HB1921). Criminalizes as a class 5 felony the confiscating, withholding or threatening to withhold a passport or other immigration or government identification

document for extortion.

Extortion of Immigrants—Ken T. Cuccinelli, II (SB815). Criminalizes as a class 5 felony to knowingly destroy, conceal, remove, confiscate or possess a passport or other immigration or government identification document for extortion.

Passed bills with negative impact:

Zoning violations: overcrowding of residential dwellings—Thomas Davis Rust (HB2261). Sharply increases fines (from \$1,000-\$1,500 to \$2,000-\$2,500) for violating the number of unrelated persons in single-family residential dwellings, and makes the failure to abate, within a specified time, for any subsequent 10-day period a separate misdemeanor. Despite the provision that no jail time could be imposed, and that enforcement need comply with local, state and federal housing laws, there is concern by advocates of disparate enforcement.

Interpreters for non English speakers: fee may be assessed if defendant fails to appear—W. Roscoe Reynolds (SB1192). Gives discretion of the Court to assess fee.

Other bills passed affecting

2007 GA Immigrant Rights/Multiculturalism Legislation Summary

Immigrants:

Commission on Immigration—Robert G. Marshall (HB 1673). Creates a 20 member advisory commission, which expires August 1, 2009, with the purpose to study, report, and make recommendations regarding the costs and benefits of immigration on Virginia.

The following bills were defeated or failed to pass:

Criminalization & criminal proceedings

Harboring or Transporting illegal alien; guilty of Class 5 felony. John S. Reid (HB 2622). As originally drafted, this bill mirrored most of the more offensive provisions of the 2005 Federal Sensenbrenner bill HR4437, but made the crime much broader by removing the requirement that the acts be in furtherance of the illegal entry. This was one of the bills which garnished most opposition from the general public, especially from religious leaders and religious community members who felt morally obligated to oppose criminalization of moral and humane duties in their ministry and personal lives. The bill was amended many times, each time continuing to prompt involvement by the religious community and the general public in opposition until following Senators of the Courts of Justice voted for the bill to be passed by indefinitely: Stolle, Saslaw, Marsh, Norment, Howell, Lucas, Edwards, and Puller.

Illegal aliens, presence unlawful in State. Mark L. Cole (HB 1918). It would have made it a Class 1

misdemeanor for a person, including minors, to be undocumented and present in Virginia.

Misdemeanor cases; law-enforcement may issue summons or arrest person. Jackson H. Miller (HB 2943). It would have given unfettered discretion to law enforcement to arrest or issue citation to appear in court in any Class 1 or 2 misdemeanor.

Illegal aliens; unlawful to be in Virginia. David B. Albo (HB 1970). As originally drafted, it would have made an undocumented person guilty of a Class 1 misdemeanor if present in Virginia and also would have authorized many officials (including game wardens) to arrest without a warrant for a mere traffic infraction.

Illegal immigrant; admission to bail. C. Todd Gilbert (HB 2322). Would have taken discretion from the judicial officer to grant/deny bail by making a presumption, subject to rebuttal, that an undocumented person was not eligible for bail.

Illegal immigration; verification of status of persons in jail. Jeffrey M. Frederick (HB 2448). Would have required verification of persons in jail as well as requiring the Virginia State Bar to investigate into the provision of legal advice to the undocumented. Some concerns about the bill including the potential for profiling of certain persons perceived as undocumented due to race, language or accent, as well as requiring investigation by the bar into both attorneys and lay people providing services to

undocumented, which would have included constitutionally protected right to counsel in criminal proceedings and assistance in documenting the person in their immigration case.

Interpreters; fee for ESL defendants. Matthew J. Lohr (HB 1656). Would have required the interpreter fee for an English as a Second Language (ESL) person to be assessed as costs if the defendant was found guilty.

Interpreters; fee for ESL defendants. Charles W. Carrico, Sr. (HB 2111). Would have required that ESL defendants pay the fees for interpreters.

Interpreters for ESL persons; imposition of local fee. Matthew J. Lohr (HB 3096). Would have allowed the imposition of the interpreter fee to a convicted ESL person if the locality had paid for the interpreter.

Immigration Enforcement

Immigration; Governor to enter MOU. Jeffrey M. Frederick (HB1618). Would have given the Governor the responsibility to enter into a Memorandum of Understanding (MOU) with federal Immigration and Customs Enforcement (ICE) that would have allowed State Police to enforce immigration.

Immigration; Governor to enter MOU. Jackson H. Miller (HB2933). Similar to previous bill.

Immigration; powers of law enforcement to enter MOU. Thomas Davis Rust (HB 2926). Would have allowed

2007 GA Immigrant Rights/Multiculturalism Legislation Summary

(cont'd from pg. 32)

law enforcement officials to enter into MOU with ICE.

Immigration: powers of law enforcement to enter MOU. Jay O'Brien (SB 1045). Would have expanded law enforcement authority to act as ICE agents and for the Department of Corrections to receive into a state or local facility persons held under ICE authority.

Illegal aliens: law-enforcement officers have authority to enforce immigration laws. Jackson H. Miller (HB 2936). Would have expanded the power of law-enforcement authority to enforce immigration law and arrest the undocumented without a warrant upon reasonable suspicion that the person has committed or is committing a crime (there was no limitation that the alleged crime be a felony or one involving violence).

Immigration status: cooperation if federal officials. Jackson H. Miller (HB 2931). Would have prohibited local governments from enacting ordinances which deny law-enforcement the power to cooperate or communicate with ICE.

Public schools; proof of immigration status to enroll, report. Jackson H. Miller (HB 2932). Widely opposed by secular and religious organizations, as well as by the general public, the bill became known as the "children-as-bait" bill, it required schools to require proof of citizenship or documented status of parents to enroll minors in public schools if the minor was not born in the U.S. (in direct contradiction of federal law prohibiting inquiry into

the child's immigration status); it further required the immigration data to be compiled and reported annually to the Secretary of education.

Immigration status investigation following conviction for youth criminal street gang activity. Dave W. Marsden (HB 3006). It would have required investigation into the youth's immigration status and permitted investigation into immigration status of household members.

EDUCATION

Tuition, in-state; prohibited for certain individuals. Frank D. Hargrove, Sr. (HB1961). Despite its title, the bill would have prohibited *admission* into higher education institutions for the undocumented.

Tuition, in-state; illegal aliens not eligible. Benjamin L. Cline (HB 2169). Would have prohibited in-state tuition for any postsecondary education to undocumented persons.

Tuition, in-state; illegal aliens not eligible. John S. Reid (HB 2623). Would have made undocumented persons ineligible to establish domicile for the purpose of receiving in-state tuition for any postsecondary education.

Tuition, in-state; illegal aliens not eligible. Jackson H. Miller (HB 2935). Would have made undocumented persons ineligible to establish domicile for the purpose of receiving in-state tuition and financial aid unless in-state tuition were granted to non-state residents.

EMPLOYMENT

Unfair employment practices: discharging employees when unauthorized aliens employed. David B. Albo (HB 1906). Would have encouraged potentially frivolous litigation against employers by presuming it an unfair employment practice, which could lead to windfall damages, to discharge a documented employee if the employer had undocumented persons in their employment; some of the major concerns were that suits would be filed based on *perception* of who undocumented persons are (i.e. Latinos, ESL, persons with accents, etc.) and that even employees discharged *for cause* had the right to sue.

Unfair employment practices: discharging employees when unauthorized aliens employed. John S. Reid (HB 2687). Similar to previous bill.

Worker's compensation: benefits paid to undocumented. John S. Reid (HB 2688). Among other things, it would have shifted liability from the insurance carrier to the employer to pay for worker's compensation benefit. Both employers and insurance carriers opposed the bill.

Commissioners of revenue: deny license to undocumented. Kathy J. Byron (HB 2806). Would have granted local commissioners power to deny or revoke business licenses to undocumented.

Business and state licenses, local: denied or suspended if business employs undocumented workers. Jackson H. Miller (HB 2930). Would have denied or

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2007 GA Immigrant Rights/Multiculturalism Legislation Summary

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suspended local business, professional and occupational business licenses to businesses employing undocumented workers.

BPOL tax; refusal to grant and revocation of business license. Kathy J. Byron (HB 3130). Prohibits issuance and permits revocation of business license to individuals who cannot provide documentation of eligibility to work.

BPOL tax; refusal to grant and revocation of business license. Ken T. Cuccinelli II (SB 1118). Would have allowed the denial or revocation of business license to either (i) an individual who cannot provide documentation of eligibility to work, or (ii) an employer who has undocumented persons in employ.

Illegal immigrants; document verification through Pilot Program. C. Todd Gilbert (HB 2328). Would have made it a Class 1 misdemeanor for an employer to fail to verify employment verification through a Pilot Program of U.S. Department of Homeland Security (DHS); the pilot program is in early testing, may not become a permanent program and requires employers to install expensive technology for using the program.

Illegal immigrants; document verification. Vivian E. Watts (HB 2605). Would have made it a Class 1 misdemeanor for an employer to falsely represent that the worker is documented, or to continue employment.

MISCELLANEOUS

Immigrants; status in order to determine domicile in Virginia.

David B. Albo (HB 2435). Would have prevented undocumented persons from establishing domicile in Virginia. Just a few examples of the consequences: 1) U.S. Citizen (USC) children of undocumented parents would have been prevented from receiving Medicaid and other public benefits as their domicile is held to be their parent's domicile; 2) Virginia Courts would have lacked authority to make custody and support orders, as well as any other matter where jurisdiction is dependent based on domicile of the parents, and 3) undocumented persons would not owe Virginia taxes.

Immigrants; requirement of lawful status for determination of legal domicile. Jackson H. Miller (HB 2934). Similar to previous bill.

Matricula Consular cards from Mexico; not to be relied as evidence of State residency.

John S. Reid (HB 2629). Would have singled out Mexican consular cards, *but not documentation by any other country, and not any other form of informal non-governmental identification* (such as membership to a gym or fitness center for example), to not be relied as evidence of State residency. *Mexican Consul Enrique Escorza, head of the Consular Section of the Embassy of Mexico in Washington, D.C., personally dialogued with legislators to make them aware of the potential international diplomatic implications of Virginia discriminatorily singling out official governmental documentation issued by our neighbor Country to the*

south. The bill was tabled in House courts of Justice.

Religious, Educational and Charitable organizations; eligibility of state/local public benefits. Jackson H. Miller (HB 2937). One of the most strongly opposed bills, it could have denied state/local funds to religious, educational and charitable organizations who did not actively inquire into immigration status *before providing any services to any person*; any funds received under this bill would have tainted all other funds, including independent donations/contributions. This bill was so strongly opposed, that Delegate Miller testified to having received a call from his own Pastor strongly opposing the bill.

Security and Immigration Compliance Act. C. Todd Gilbert (HB 2826). As originally drafted, it was an 11 page bill, which intended to pass multiple unrelated provisions with mixed positive and negative consequences. The provisions included: public bodies worker verification program requirement, criminalization as a Class 5 felony of extortion of undocumented, requiring law enforcement to report to ICE certain arrestees, regulation of persons providing immigration services, and taxation requirement for certain employers.

Bills which failed to pass which would have had positive impact:

Human Anti-Trafficking Act. Terrie L. Suit (HB 1827). Would have established in Virginia Law the "Model State Anti-Trafficking Criminal Statute" drafted by the U.S.

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2007 GA Immigrant Rights/Multiculturalism Legislation Summary

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Department of Justice (DOJ). Virginia does have criminal statutes which address some of the crimes addressed in the act, but they are not as comprehensive.

Human Anti-Trafficking Act: created, report. Adam P. Ebbin (HB 2551). Would have made it a Class 4 felony to engage in human trafficking for the purpose of commercial sex acts or sexually explicit performance; it would have also provided civil liability, business entity liability, restitution to victims, forfeiture of assets and study by a Governor's task force.

Human trafficking: joint subcommittee to study. Adam P. Ebbin (HJ 682). Would have established a subcommittee to study the extent of human trafficking in Virginia; the committee would have also determined efforts required to prevent and punish associated crimes; the subcommittee would have been required to submit a report in 2008.

Extortion of immigrants. David

B. Albo (HB 2264). Would have made it a Class 5 felony to confiscate, withhold or threaten to withhold a passport, immigration document, or other government identification, for purpose of extorting money or other pecuniary benefit.

Extortion: withholding immigration document. Adam P. Ebbin (HB 2924). Similar to previous bill.

Extortion: withholding immigration document. Jay O'Brien (SB 1027). Similar to previous bill.

Extortion: withholding immigration document. Janet D. Howell (SB 12027). Similar to previous bill.

Undocumented immigrants: joint subcommittee to study impact. Christopher B. Saxman (HJ 776). Would have created a joint subcommittee to study impact on state economy and resources.

Special identification cards: provisions not to apply to certain applicants. Daniel W. Marshall, III (HB 2471). Would have made the provisions of

renewing, duplicating or reissuing an ID card the same as those for a Driver's License (by not requiring proof of legal presence in the case of renewal, duplication or reissuance, if the applicant held an ID or DL which had not been expired for more than 5 years)

Tuition, in-state: prohibited for those unlawfully present unless certain conditions met. Emmett W. Hanger, Jr. (SB 1204). Although persons unlawfully present in Virginia would be ineligible for in-state tuition, persons meeting certain conditions would qualify for in-state tuition (requirements would have included having initiated the immigration process, paid taxes, graduated from a Virginia High school and resided in Virginia in the preceding 3 years).

New Responsible Lending Coordinator for Virginia Partnership to Encourage Responsible Lending

Hello Everyone!

My name is Dana Wiggins, and I'm the new Responsible Lending Coordinator for Va PERL. I'm excited to work on this important issue with all of you.

I just want to introduce myself, and give you a little bit about my background. I am coming to Va PERL from the Chesapeake Bay Foundation as their VA Grassroots Coordinator. Before that, I worked as a

Peace Corps volunteer in the country of Guinea in West Africa, and briefly as an assistant manager of a low-income housing complex in South Richmond. I look forward to moving ahead, and gaining more momentum on this issue working with all of you.

Please feel free to contact me with questions.

Best Regards,
Dana

VPLC Hires New Public Benefits Staff Attorney

Ty Jones has joined Virginia Poverty Law Center as the new Public Benefits Staff Attorney. Ty previously worked at Virginia Legal Aid Society in the Suffolk Office. While in law school, Ty interned at the Public Justice Center in Baltimore, Maryland and also the Lawyer's Committee in Washington, D.C. where she worked on landlord tenant, prisoner's rights, and education issues.



**Virginia Poverty Law Center,
Inc.**

Virginia Poverty Law Center
700 East Franklin Street
Suite 14T1
Richmond, VA 23219

Phone: 804-782-9430
Fax: 804-649-3746
E-mail: kevin@vplc.org

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