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Recent Legislation

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RECENT LEGISLATION

ADMINISTRATION OF GOVERNMENT—CONFLICT OF INTEREST.
Va. Code Ann. §§ 2.1-347 through 2.1-358 [New statutes].

The Virginia Conflict of Interests Act purports to establish a single standard of conduct and a uniform set of interest rules for state and local government officers and employees. The Act repeals all conflicting legislation including statutes, charter provisions and local ordinances. Though its validity and the scope of its applicability must await judicial determination, the following may serve as a guide to its principal provisions.

The Conflict of Interests Act recognizes that the potential conflicts which might arise differ with the various types of governmental affiliation a person might create, and delineates different restrictions accordingly. It divides the agencies of which one might be an officer or employee into two classes, governmental and advisory. A legislative, executive, or judicial body, office, department, authority, post, commission, committee, institution or board created by law to exercise some sovereign power or to perform some duty of State or local government (other than purely advisory powers or duties) constitutes a governmental agency. A board, commission, committee, or post which does not exercise a sovereign power or duty, but is appointed by a governmental agency or created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency constitutes an advisory agency. The act prohibits any officer or employee of a governmental agency from being a contractor or subcontractor, or having a material financial interest in any contract with the governmental agency of which he is an officer or employee (except of course, his contract of employment). Nor may an officer or employee of a governmental agency contract with any other governmental agency or have a material financial interest in any such agreement unless full written disclosure of this interest is made in advance to both agencies, and either (1) the contract is let after competitive bidding, or (2) the governing body or administrative head of the agency determines in writing and as a matter of public record, that in the public interest such contract should not be acquired through competitive bidding. A material financial interest, with statutory exceptions, includes a personal or

a pecuniary interest which accrues either to the officer or employee himself, to his wife, or to any other relative who resides in the same household.

The restrictions of the Virginia Conflict of Interests Act do not apply to the sale, lease or exchange of real property between an officer or employee and an agency if the officer or employee does not act for the agency in the transaction. The Act's prohibitions do not apply to a governmental officer or employee whose sole interest in a contracting firm is by reason of his employment therein, unless he participates in, or has authority to participate in, the procuring or letting of the contract. An officer or employee of a local government may, without disclosure, contract with another governmental agency if the agency is not connected directly with or a part of his local government unit, and no part of the contract is to be performed within the jurisdiction of his local government. However, such a public servant may not be a purchaser at any sale supervised by him (in his official capacity) or his agency except where goods or services provided as public utilities are offered to the general public on a uniform price schedule.

Officers and employees of governmental agencies are prohibited from soliciting or accepting money or other objects of value in excess of the compensation, expenses, and other remuneration received from their agencies for services performed within the scope of their official duties. Nor may an officer or agent of any governmental or advisory agency offer or accept anything of value for, or in consideration of, obtaining an appointment, promotion, or privilege with any agency. He may not accept any gift, favor or service that might reasonably tend to influence the discharge of his duties, and no governmental or advisory agent shall disclose any information which was gained through the agency to any persons not entitled thereto, or otherwise use this information to his personal advantage.

If the officer or employee of any governmental or advisory agency knows, or may reasonably be expected to know, that he has a particular material financial interest in a transaction in which his agency is or may be concerned, he must disclose his interest to the governing board of such agency and disqualify himself from voting or participating in any official action on the transaction. An officer or employee who believes or has reason to believe that he has a material financial interest which may be affected by the actions of the governmental or advisory agency

of which he is an officer or employee must disclose the exact nature and value of such interest. Disclosures must be in writing to the Attorney General in cases involving a state agency and to the Commonwealth's Attorney if a local agency is involved. All such disclosures are to be matters of public record.

No member of the General Assembly may accept or solicit any benefits or favors, except political contributions used for political campaign purposes, that might reasonably tend to influence him in the discharge of his duties. Members may not use improper means to influence a state agency or utilize confidential information acquired in their official capacities for their own economic interests. Members must file disclosure statements that are open to public scrutiny. Violation of these provisions will result in discipline by the house of which the legislator is a member.

Violation of the Virginia Conflict of Interests Act gives the contracting or selling governmental agency the right to declare an affected contract void within 5 years of the contract date, and if the contract is nullified, the other party may retain or receive only the reasonable value of the property or services previously furnished without profit or commission.

Criminally, any violation of the Conflict of Interests Act constitutes a misdemeanor. Conviction of any officer or employee causes forfeiture of employment, and any profits gained from such a violation accrue to the State. The Attorney General and Commonwealth's Attorney shall enforce the Act at the State and local levels respectively.

After its passage by the 1970 session of the Virginia General Assembly, the Attorney General of Virginia construed this Act to mean that two members of the same household could not be employed in the same public school system. Upon a showing of the necessary irreparable injury, the Circuit Court of the City of Richmond enjoined such an application of the Act pending a judicial determination of its validity.

CHARITABLE GIFTS—AMENDMENT, DISTRIBUTION AND PROHIBITIONS. *Va. Code Ann. §§ 55-29.1 through 55-29.3 [New statutes].*

Where any charitable or educational gift, grant, devise or bequest establishes a private foundation or constitutes a split-interest trust, as defined by the Internal Revenue Code of 1954, such trust may be amended, even after it has been instituted as irrevocable, in order to com-

ply with federal requirements for exemption of the trust, or any interest therein, from federal taxes. Such amendment may be procured by the trustee with the concurrence of the creator of the trust (if then living and able to give consent), and the Attorney General. Also, every trust receiving any gift, grant, devise or bequest which is deemed to be a private foundation, unless its governing instrument provides otherwise, shall distribute its income for each taxable year in such a manner as will not subject the trust to a tax on unreasonable accumulations of income, nor shall it engage in any prohibited act of self-dealing or retain any excess business holdings or make any investments which jeopardize the charitable purpose or expenditures promotive of legislation or attempt to influence a public election as defined and specified in the Internal Revenue Code. These stipulations apply to charitable trusts established prior to 1970 for taxable years beginning on and after 1972.

A trust receiving such benefit which is considered a split-interest trust and receives a gift after May 27, 1969, shall not engage in self-dealing, retain excess business holdings, make investments subject to tax, or produce taxable expenditures pursuant to the Internal Revenue Code unless the governing instrument provides otherwise. This proviso does not apply in certain cases unless a charitable deduction was allowed. These statutes were enacted to enable and encourage charitable trusts and private foundations to comply with the Federal Tax Reform Act of 1969 so as to avoid taxation.

CIVIL PROCEDURE—EVIDENCE OF GUILTY PLEA ADMISSIBLE IN CIVIL ACTION ARISING OUT OF SAME OCCURRENCE. *Va. Code Ann. § 8-267.1 [New statute].*

If any party to a civil proceeding pled guilty to a criminal prosecution which arose out of the same occurrence upon which the civil action is based, evidence of such plea as shown by the criminal court records shall be admissible. If the records are silent as to the plea, the court hearing the civil case shall admit evidence as may be relevant and the question of whether or not such plea was made shall be a question of fact for the court or jury trying the case to determine.

CIVIL PROCEDURE—PHYSICAL OR MENTAL EXAMINATIONS OF PARTIES. *Va. Code Ann. § 8-210.1 [New statute].*

Notwithstanding any other provision of the law to the contrary, if

the pleadings in any action raise the issue of the physical or mental condition of a party, then the court, upon motion of an adverse party, may order the party to submit to an examination by one or more physicians or licensed clinical psychologists named in the order and employed by the moving party. A written report of the examination must be filed with the clerk of the court before trial and a copy furnished to each party. The court in its discretion may fix a time and place for the examination and the time for filing the report and furnishing copies.

CIVIL PROCEDURE—SERVICE OF PROCESS ON COMMISSIONER OF MOTOR VEHICLES. *Va. Code Ann. § 8-67.2 [Amendment].*

For purposes of the mailing required by this statute to nonresident motorists, if the defendant is licensed by this State to operate a motor vehicle herein, the address on the application or renewal thereof is deemed conclusive if no other address is known, but if the defendant is not so licensed by this State, then the address shown on the accident report or given to the investigating officer at the scene is conclusive.

This statute precludes a defense of lack of personal jurisdiction in cases in which the mailed notice of motion for judgment does not reach the defendant due to his change of address without notification to the Division of Motor Vehicles. Failure to notify the proper authorities of a change of address is deemed an acceptance of valid service by mailing to the previous address. Reporting an incorrect address, or moving without notice from an address is deemed to be a waiver of notice and consent to and acceptance of service of process upon the Commissioner.

COMMERCE—ACT TO PROHIBIT VOLUNTARY AND UNSOLICITED SENDING OF GOODS, WARES, AND MERCHANDISE. *Va. Code Ann. § 11-2.2 [New statute].*

If any person, firm, partnership, association or corporation, or any agent or employee thereof, sends any goods, wares, or merchandise not actually ordered or requested by the recipient, then the sender of such unsolicited goods shall for all purposes be deemed to have made an unconditional gift to the recipient thereof. The recipient may use or dispose of the goods in any manner he deems proper without obligation to return or pay for them.

COMMERCE—HOME SOLICITATION SALES. *Va. Code Ann. §§ 59.1-21.1 through 59.1-21.6 [New statutes].*

A buyer has the right to cancel a home solicitation sale (consumer credit sale of goods, other than farm equipment, or services in which the seller or a person acting for him engages in a personal solicitation of the sale at a residence of the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him) until midnight of the third business day following the day on which the buyer signs an agreement or offer to purchase. The buyer is precluded from cancelling if he requested the seller to provide goods or services without delay because of an emergency, and the seller in good faith has made a substantial beginning of performance of the contract before notice of cancellation, and the goods are not returned to the seller in substantially the same condition as they were received. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address indicated in the agreement or offer of purchase.

In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the written agreement between the parties must contain the signature of the buyer, the date of the transaction, and a statement of the buyer's right to cancel. Failure to follow these criteria will result in the buyer having an option to cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

These sections do not apply where the seller has an established place of business in Virginia within 75 miles of the place where any sale is made and has purchased a current retail merchant's license in this State. Is this provision unconstitutional in that it discriminates against businesses engaged in interstate commerce?¹

CONTRACTS—UNSOLICITED CREDIT CARDS. *Va. Code Ann. §§ 11-30 through 11-34 [New statutes].*

These sections provide that a cardholder who receives a credit card from an issuer, which he has neither requested nor consented in writing to the issuance thereof, is not liable for any amount owing because of an unauthorized use of the card. Failure to destroy or return an unsolicited credit card is not evidence of request or consent nor will it

¹ See *Dean Milk Co. v. City of Madison*, 340 U.S. 349 (1951); *Minnesota v. Barber*, 136 U.S. 313 (1890).

constitute negligence on the part of the cardholder. Any use of a credit card by an authorized agent of the cardholder shall be the equivalent of use by the cardholder. The burden of proving the agent's authority is upon the issuer. It is not necessary that any cardholder, who has used his card within twelve months previous to the renewal date, or established credit with the issuer and used such credit within twelve months prior to the issuance of said card, request or consent in writing to its issuance.

If there is a suit upon the credit card and the request, consent or use required by the statute is denied, and cannot be proved, the court is directed to assess all court costs against the issuer in the event of judgment for the defendant. Furthermore, the defendant shall also be awarded a reasonable attorney's fee.

CORPORATIONS—PROFESSIONAL CORPORATIONS. *Va. Code Ann. §§ 13.1-542 through 13.1-556 [New statutes].*

Any group of individuals which renders the same professional service to the public for which such individuals are required by law to be licensed or to obtain other legal authorization from the Commonwealth may form a "professional corporation" under this new statute. This allows doctors, attorneys, dentists, architects, and other professional persons to incorporate. These provisos dictate that only those individuals duly licensed or legally authorized to render the same professional service may be stockholders. Special regulations are established as to architects, professional engineers and land surveyors.

Furthermore, services of the corporation shall be rendered only by its officers, employees and agents who are duly licensed or legally authorized to do so. No stockholder shall sell or transfer his shares except to the corporation or to another individual eligible to be a shareholder. Such corporations may consolidate or merge with another corporation only if the professional corporation is the survivor.

Professional associations organized pursuant to Va. Code § 54-873 et seq., may merge into a professional corporation with a minimum of internal reorganization prior to July 1, 1972.

CRIMINAL LAW—ACT TO DEFINE THE OFFENSE OF FAILURE TO LEAVE PREMISES OF INSTITUTION OF HIGHER LEARNING. *Va. Code Ann. § 18.1-173.2* [New statute].

Any person, whether a student or not, who has been directed to leave the premises of any institution of higher learning by a person in authority and who fails to do so, shall be guilty of a misdemeanor. Each day such person remains on the premises after being ordered to leave shall constitute a separate offense.

CRIMINAL LAW—BREATH TEST TO DETERMINE ALCOHOLIC CONTENT OF BLOOD. *Va. Code Ann. § 18.1-54.1* [New statute].

This provision, effective January 1, 1971, allows any person who is suspected of operating a motor vehicle while intoxicated to have his breath analyzed, if the proper equipment is available, to ascertain the probable alcoholic content of his blood. This test is optional with the driver as a prelude to the blood sample which may be extracted according to § 18.1-55.1. Any person operating a motor vehicle who is stopped by any law enforcement official and suspected of being intoxicated, has the privilege to refuse to submit to a breath test and such failure to permit this analysis shall not be evidence in a prosecution for operating a motor vehicle while intoxicated. The results of such breath analysis will not be available as evidence by the prosecution for operating a motor vehicle under the influence of alcohol. The purpose of the statute is to permit a preliminary analysis of the alcoholic content of the blood of a person suspected of driving while intoxicated.

CRIMINAL LAW—PICKETING OF DWELLING PLACES PROHIBITED. *Va. Code Ann. §§ 18.1-367.1 through 18.1-367.6* [New statutes].

Noting that it was the public policy of the State to protect an individual's tranquility in his home, the 1970 Assembly prohibited the picketing before any residence or dwelling house of any individual and the assembly of persons in a manner which disrupts or threatens to disrupt any individual's right to tranquility in his home, excepting only the picketing of a place of employment during a labor dispute or of a construction site or the holding of a meeting on any premises generally used therefor. A violation of this section is punishable by a fine not exceeding \$500 and/or not more than 9 months imprisonment. A court of general

equity jurisdiction is empowered to enjoin such conduct and award damages, including punitive damages.

CRIMINAL LAW—PRODUCING ABORTION OR MISCARRIAGE. *Va. Code Ann. § 18.1-62.1* [*New statute*].

This provision follows the trend promulgated recently in numerous jurisdictions. It is now lawful in Virginia for any physician licensed by the State Board of Medical Examiners to terminate or attempt to terminate a human pregnancy by performing an abortion or causing a miscarriage on any woman if certain criteria are followed. The woman must have been a resident of Virginia for 120 days immediately preceding the date of termination or attempted termination of the pregnancy. The operation must be performed in an accredited hospital licensed by the Department of Health. The physician must file an affidavit stating that in his opinion continuation of the pregnancy is likely to result in the death of the woman or substantially impair her mental or physical health. Grounds for inducing such an abortion or miscarriage also exist if the physician feels there is substantial likelihood that the child will be born with an irremediable and incapacitating mental or physical defect.

In lieu of a physician's affidavit, an abortion or miscarriage may be performed if an affidavit from the woman is filed in her hospital records stating that the pregnancy resulted from incest or rape, and such alleged incest or rape be reported to the proper authorities within 7 days subsequent to the alleged offense or as soon thereafter as possible in cases involving kidnapping or abduction.

The woman must be 21 years of age before she is deemed competent to consent to such abortion or miscarriage. If there is substantial likelihood that the child will be born with an irremediable and incapacitating mental or physical defect and the woman is married, the written consent of her husband is necessary if they be living together as man and wife. If a woman be an infant or adjudicated incompetent, permission must be given by a parent, guardian or person standing *in loco parentis* to such infant or incompetent. A married woman over the age of 18 years is deemed competent to consent in the same manner as though she were 21 years of age or older; however, if she be an infant or adjudicated incompetent, then her husband must give his permission. Written consent for the operation must be given by a majority of the

Hospital Abortion Review Board (consisting of 3 physicians of which one is a specialist in obstetrics or gynecology) in the hospital where the abortion takes place. Any person who submits a false affidavit as required by this statute is guilty of a misdemeanor.

CRIMINAL LAW—RIOTOUS OR DISORDERLY CONDUCT AT PUBLIC MEETINGS. *Va. Code Ann. § 18.1-253.3* [*New statute*].

Any person behaving in a riotous or disorderly manner in any public meeting of a governing body or any division thereof, or causing unnecessary disturbance therein by force, shouting, or any other disrupting action or refusing to obey any ruling of the presiding officer relative to the orderly process of such meeting, is guilty of a misdemeanor. Local governing bodies are authorized to adopt ordinances prohibiting and punishing these acts when committed at any such public meeting in such local government entity.

CRIMINAL PROCEDURE—AUTHORITY OF POLICE TO QUESTION AND SEARCH SUSPICIOUS PERSONS. *Va. Code Ann. § 19.1-100.2* [*New statute*].

This new provision allows law enforcement officials to exercise broad discretion in detaining a suspected felon in a public place. Any police officer is given the authority to detain any person whom he reasonably suspects is committing, has committed or is about to commit a felony or possesses a concealed weapon, and may require of such person his name and address. Furthermore, if the police officer reasonably believes that such person intends to do him bodily harm, he may search the suspect for a dangerous weapon; and if such person is found to possess a dangerous weapon illegally, then take possession of the same and dispose of it as provided by law.

DIVORCE—INSANITY NOT GROUNDS FOR BAR TO DECREE BASED ON SEPARATION. *Va. Code Ann. § 20-91* [*Amendment*].

This amendment abrogates the holding in a recent Virginia case that in order to obtain a divorce based on a two-year separation both spouses must be of such mental competence as to be conscious that a separation has occurred.² The statute was altered by a clause providing that on

² *Crittenden v. Crittenden*, 210 Va. 76, 168 S.E.2d 115 (1969), *commented on in* 4 U. RICH. L. REV. 347 (1970).

the application of either party, if and when the husband and wife have lived separate and apart without any cohabitation or interruption for two years, regardless of whether either party has been adjudged insane either before or after such separation commenced, a plea of *res judicata* or recrimination with respect to the insanity of either party shall not be a bar to either party obtaining a divorce on this ground. At the expiration of two years from the commencement of such separation, the grounds of divorce shall be deemed to be complete, and the committee of the insane defendant, if there be one, shall be made a party to the cause, or if there be no committee, then the court shall appoint a guardian *ad litem* to represent the insane defendant. This provision applies whether or not the separation commenced prior to enactment of the statute. Any decree of divorce pursuant to this new clause shall not lessen any obligation which a husband may otherwise have to support his wife unless he shall prove there exists in his behalf some other ground of divorce.

EDUCATIONAL INSTITUTIONS—POWER OF GOVERNING BODY TO ESTABLISH RULES. *Va. Code Ann. § 23-9.2:3 [New statute].*

The board of visitors or other governing body of every educational institution has the power to establish rules and regulations for the acceptance and conduct of students and for the dismissal of students who fail to abide by such rules and regulations. Likewise, these governing bodies are empowered to establish rules and regulations for the employment of professors, teachers, instructors and other employees, and to provide for their dismissal for violations thereof. The governing body of a political subdivision which is contiguous to an educational institution may enforce state and local laws with respect to offenses occurring on the property of the educational institution upon request of its governing body.

EMINENT DOMAIN—RELOCATION ASSISTANCE AND MOVING EXPENSES. *Va. Code Ann. § 25-46.35 [New statute].*

This provision provides that whenever any person or entity vested by law with the power to exercise eminent domain acquires real property which results in the displacement of any eligible person (any family or individual who is the owner of real property which is acquired by any person or entity with the authority to exercise the right of eminent

domain and which has been improved by a single or two-family dwelling occupied by the owner for not less than one year prior to initiation of negotiation for such property), such person shall be entitled to payment for such displacement not in excess of \$5,000, in an amount which, when added to the just compensation for the real property acquired, is equal to the average price required for a comparable dwelling with all the advantages of the former. Payment may be made only to a displaced owner who purchases and occupies a dwelling within one year subsequent to the date on which he is required to move from the dwelling acquired. In addition, any eligible person shall be entitled to receive compensation for moving expenses resulting from displacement provided such payment does not exceed the cost of moving 15 miles or the sum of \$200, whichever is less.

EMINENT DOMAIN—RELOCATION ASSISTANCE FOR PERSONS DISPLACED BY HIGHWAY CONSTRUCTION. *Va. Code Ann. §§ 33-75.01 through 33-75.011 [New statutes].*

Effective at the time of passage, these statutes provide for establishment of a relocation advisory assistance program under the direction of the State Highway Commissioner. Under these provisions, any business concern, farmer, sharecropper, family head or individual not a member of a family, displaced by the condemnation of land for highway construction may receive actual moving expenses or, if displaced from a dwelling, a moving expense allowance not to exceed \$200 and a dislocation allowance of \$100. Any businessman or farm operator may elect to receive, in lieu of actual moving expenses, an amount equal to half the average annual net earnings or \$5000, whichever is the lesser, provided that, in the case of a business, relocation is not possible without a substantial loss of existing patronage.

Also, provision is made for the payment of an additional amount not to exceed \$5000, which when added to the acquisition payment equals the average price required for a comparable dwelling. Dislocated tenants may also be paid an amount up to \$1500 for two years rental elsewhere or a down payment on an adequate dwelling. Other fees and taxes will also be paid by the Commissioner. No payment under this article shall be considered income for purposes of state or local income tax laws.

FIDUCIARIES—LIABILITY OF SUCCESSOR TRUSTEE. *Va. Code Ann.* § 26-5.1 [*New statute*].

This statute delineates the rights of substitute or successor fiduciaries of a trust which is to receive assets by a devise or bequest in a will. A trustee receiving such assets, if the trustee is not the personal representative, may rely upon the account of the personal representative as being correct when confirmed in a manner prescribed by law in the absence of actual knowledge of an act or omission which would subject the personal representative to liability. A substitute or successor trustee may likewise rely upon accountings properly filed by any prior trustee.

In the case of a trust which does not require accountings to be filed with the commissioner of accounts, the court may appoint a special commissioner to review the accounts of the prior trustee and report his findings. Upon confirmation of such report by the court, the successor trustee may rely upon it as being correct and is not obligated to inquire further into the acts or omissions of such prior trustee in the absence of actual knowledge of an act or omission which would subject the prior trustee to liability. The court may, in its discretion, enter an order relieving the substitute trustee from personal liability in the same manner as if the trustee had relied upon a confirmed account. The substitute or successor trustee is not relieved by this statute from any liability for retaining improper investments, nor does it constitute a bar to actions against any prior fiduciary for his acts or omissions.

FINANCE—BAD CHECKS. *Va. Code Ann.* § 6.1-117.1 [*New statute*].

This new code section provides that in any prosecution or action under the bad check statute (§ 6.1-115), any notation attached to a check, draft or order which is refused by the drawee because of lack of funds or credit, bearing the terms "not sufficient funds," "uncollected funds," "account closed," or "no account in this name," or similar words, shall be prima facie evidence that such notation is true and correct.

FINANCE—CERTAIN INTEREST RATES NOT TO BE DEFEATED. *Va. Code Ann.* § 6.1-328 [*Amendment*].

By virtue of this section, Virginia has removed FHA insured and VA guaranteed loans secured by first liens or made directly by banks from the usury statute. The removal of these loans from the usury statute

recognizes the effectiveness of the regulation by the FHA and VA authorities who guarantee these loans.

FINANCE—INTEREST RATES ON LOANS SECURED BY FIRST MORTGAGES OR DEEDS OF TRUST. *Va. Code Ann. § 6.1-319.1* [New statute].

This provision removes the interest rate ceiling on loans secured by a first deed of trust or first mortgage on real estate. Contracts not governmentally regulated for such loan or forbearance of money where the amount involved is less than \$75,000 shall permit prepayment of the unpaid principal at any time, and no penalty shall be allowed in excess of 1% on the unpaid principal balance. This statute shall remain in effect only until July 1, 1972, unless extended by the General Assembly. Any contract entered into prior to such date remains valid and enforceable according to the terms of the contract. Loans for agricultural purposes, whether secured or unsecured, may be made at a rate up to the maximum effective rate for installment loans pursuant to § 6.1-320.

FINANCE—PLEA OF USURY ON LOANS. *Va. Code Ann. § 6.1-327* [Amendment].

This statute has been amended to include partnerships which have filed a certificate as required by Chapter 3, Title 50 of the Code, professional associations, and real estate investment trust companies among entities that cannot avail themselves of a plea of usury in an attempt to avoid the payment of interest which they have contracted to pay.

FINANCE—SERVICE CHARGES. *Va. Code Ann. § 6.1-362* [New statute].

This section allows sellers and lenders engaged in the extension of consumer credit under an open-end or similar plan, which provides for a 25-day free period for payment of initial bills without any charge, to impose a 1½% per month service charge. No service charge is permitted unless the bill is mailed within eight days of the billing date.

GARNISHMENT—MAXIMUM PORTION OF DISPOSABLE EARNINGS SUBJECT TO. *Va. Code Ann. § 34-29* [Amendment].

Effective October 1, 1970, the maximum part of the aggregate dis-

posable earnings (remaining after the deductions required by law to be withheld) of an individual for any work-week which is subjected to garnishment, may not exceed the lesser of (1) 25% of his disposable earnings for that week, or (2) the amount by which his disposable earnings for such week exceed 30 times the Federal minimum hourly wage (currently \$1.60). This amendment adopted the Federal garnishment provision recited in the Consumer Credit Protection Act (15 U.S.C.A. § 1673). This limitation is inapplicable to orders for support by any court, orders of any court of bankruptcy under a wage-earner plan, or to debts for any state or federal tax. The Virginia statute makes it a crime to discharge any employee because his earnings have been subjected to garnishment for any one indebtedness.

HEALTH—UNIFORM ANATOMICAL GIFT ACT. *Va. Code Ann. §§ 32-364.3 through 32-364.11* [*New statutes*].

Virginia, following the modern trend, has adopted this Uniform Act which provides that any individual of sound mind, who has reached the age of eighteen years, may give all or any part of his body for the advancement of medical or dental science, therapy or transplantation. Such gift may be made to any hospital, surgeon or physician, accredited medical or dental school, college or university, bank or storage facility, or any specified individual for therapy or transplantation needed by him. Certain persons are listed in priority who may give all or part of the decedent's body, in absence of actual notice of contrary intentions by the decedent, or opposition of a member of the same class, to an approved donee. The Act provides that the gift of one's own body may be made by will, other written document, or in any manner which indicates such intent on behalf of the donor. Ample provision has been promulgated for amendment or revocation of the gift by the donor.

The time of death shall be determined by the physician attending the donor at his death, or, if none, the physician who certifies death. Such physician shall not participate in the procedures of removing or transplanting any part of the decedent's anatomy. Any person who acts in good faith in accordance with these provisions or under similar laws of another state or foreign country, shall not be liable for damages in any civil action or subject to criminal prosecution for such act.

INFANTS—AUTHORITY OF JUVENILE AND DOMESTIC RELATIONS COURTS TO CONSENT TO SURGICAL AND MEDICAL TREATMENT OF CERTAIN PERSONS UNDER AGE. *Va. Code Ann. §§ 16.1-158 and 32-137 [Amendments].*

Judges of juvenile and domestic relations courts are now authorized to consent to the surgical or medical treatment of a child or minor when the consent of his parent or guardian is unobtainable because such parent or guardian is a non-resident or his whereabouts are unknown, or cannot be consulted with promptness, reasonable under the circumstances.

INSURANCE—CANCELLATION AND RENEWALS OF AUTOMOBILE LIABILITY INSURANCE. *Va. Code Ann. § 38.1-381.5 [New statute].*

No insurer (includes insurance companies, associations or exchanges authorized to transact the business of automobile insurance in Virginia) shall cancel or refuse to renew a policy of automobile insurance (policy or contract for bodily injury or property damage liability insurance covering liability arising out of ownership, maintenance, or use of any motor vehicle, insuring as the named insured, one individual or husband and wife who are residents of the same household) solely because of the age, sex, residence, race, color, creed, national origin, ancestry, marital status or lawful occupation (including military service) of anyone who is insured. However, an insurer is not required to renew a policy for an insured where the insured's occupation has changed so as to materially increase the risk. No cancellation or refusal to renew by an insurer of a policy of automobile insurance shall be effective unless the insurer shall deliver or mail, to the named insured at the address shown in the policy, a written notice of the cancellation or refusal to renew. Such notice shall state the specific reason or reasons for the cancellation or intention not to renew or be accompanied by a statement that such information will be made available to the insured upon written request, not less than 10 days prior to the effective date of cancellation or refusal to renew. The statute prescribes the grounds which may be utilized by the insurer for a policy cancellation, but is not applicable to policies which have been in effect less than 60 days.

LIENS—CONFESSION OF JUDGMENT. *Va. Code Ann. § 8-358 [Amendment].*

This section relating to liens of judgments procured under a con-

fession of judgment clause was amended to provide that unless it is otherwise provided in the note, bond, or power of attorney to confess judgment, the judgment shall not be a lien against the principal residence of the maker until the expiration of 21 days after notice to him of the entry of such judgment. If within this period of time the judgment debtor files a motion or other pleading, the judgment does not become such lien until an order to that effect is entered by the court. This statute is designed so that the routine confession of judgment power previously utilized in Virginia will not result in an immediate lien against the principal residence of the maker. This amendment will exempt ordinary confession of judgment notes from the rescission provisions of Regulation Z of truth-in-lending.

LIENS—KEEPERS OF GARAGES AND MARINAS. *Va. Code Ann. § 43-32 [Amendment].*

Every keeper of a livery stable, marina or garage, or person keeping animals, vehicles, boats or harness, shall have a lien upon such animals, vehicles, boats or harness for the amount which may be due him for care and support thereof, until such amount is paid. In case any boat or vehicle is subject to a chattel mortgage, security agreement, deed of trust, or other instrument securing money, the keeper of the marina or garage shall have such lien to the extent of \$75, and shall be entitled to a lien against the proceeds, if any, following the satisfaction of all prior security interests or liens, and may retain possession of such property until such charges are paid.

With respect to such prior liens, this new proviso puts storage liens on the same level as mechanics' liens and, therefore, modifies a recent Virginia decision which held that a perfected security interest noted on the title certificate had absolute priority over a storage lien.³

MOTOR VEHICLES—RESULTS OF SPEEDOMETER CALIBRATION TESTS ADMISSIBLE IN PROSECUTION FOR EXCEEDING SPEED LIMIT. *Va. Code Ann. § 46.1-193.1 [Amendment].*

In the trial of any person charged with exceeding the maximum speed limit, the court shall receive as evidence a sworn report of the results of a calibration test of the accuracy of the speedometer in the

³ *Checkered Flag Motor Car Co. v. Grulke*, 209 Va. 427, 164 S.E.2d 660 (1968).

motor vehicle operated at the time of the alleged offense. The court no longer has any discretion as to the admissibility of such evidence.

PHARMACEUTICALS AND DRUGS—THE DRUG CONTROL ACT. Va. Code Ann. §§ 54-524.1 through 54-524.108 [New statutes].

The Uniform Narcotic Drug Act was repealed by the 1970 Assembly, thus bringing Virginia into line with the growing trend of states that are shifting to drug control legislation. These provisions bring together the diverse laws regarding pharmacists and drugs into a comprehensive and compact unit. The significant changes begin with Article 5 dealing with distribution of drugs and continue through Article 8 dealing with prohibited acts and penalties. Article 6 provides for a categorical division of the controlled drugs into five schedules, each of which is subject to different methods of control. Besides providing for the maintenance of detailed records concerning these drugs by those manufacturing, compounding, processing, dispensing or otherwise disposing of them, Article 5 sets strict limitations on the manufacturing, sale and disposition of each of the controlled groups. Article 7 attacks the problem of misbranded and adulterated drugs and cosmetics by penalizing the numerous acts connected thereto and further providing for injunctive relief against any violation of this Article.

The most significant changes are found in Article 8. Under the Uniform Narcotic Drug Act any violation of the provisions was punished as follows: 1st offense, no more than a \$1,000 fine and 3-5 years imprisonment; 2nd offense, no more than \$2,000 and 5-10 years; and 3rd or subsequent offenses, no more than \$3,000 and 10-20 years. Sale to a minor brought a penalty of 10-30 years imprisonment which could not be suspended. If the offense was possession of illegally acquired narcotic drugs in any quantity greater than 25 grains (if in solid form), then the offender was subject to a fine up to \$5,000 plus 20-40 years in prison.

Under the new statutes the penalty for unlawful possession of marijuana is lowered to a misdemeanor punishable by a fine not exceeding \$1,000 and/or confinement in jail up to 12 months. The penalty for possession unlawfully of Schedule I and II drugs which includes most of the "hard" narcotics except marijuana is set at one to 10 years in the penitentiary or, at the discretion of the jury or the court trying the case without a jury, confinement for a period not exceeding 12 months and/or

a maximum fine of \$5,000. Any subsequent violation for unlawful possession of either marijuana or the harder drugs carries with it a penalty of 2 to 20 years in the penitentiary or in the discretion of the jury or the court trying the case without a jury confinement in jail not exceeding 12 months and/or a maximum fine of \$10,000. The unlawful manufacture, distribution or possession with intent to distribute of a controlled drug in Schedules I, II, and III, which includes marijuana and other "hard" drugs, results in a penalty of one to 40 years in the penitentiary and/or up to \$25,000 fine for a first offense and imprisonment of 10 years to life and/or not more than \$50,000 for any offense thereafter.

RECORDATION OF DOCUMENTS—UNIFORM RECOGNITION OF ACKNOWLEDGMENTS ACT. *Va. Code Ann. §§ 55-118.1 through 55-118.9* [*New statutes*].

The 1970 Assembly made "notarial acts" performed outside the State for use in this State just as valid as if performed by a notary public within this State if the notarial act is performed by a notary public, judge, clerk, deputy clerk (the latter three of any court of record), an officer of the foreign service, a commissioned officer in the Armed Forces, etc., as long as they are authorized to perform such acts in the place where the act is performed. The new statutes designate the proof of authority recognized as sufficient, the substance of the certification necessary, and the form of acknowledgment recognized.

TAXATION—RELIEF IN EVENT OF DISASTER. *Va. Code Ann. § 58-27.2* [*New statute*].

If a common disaster is declared such by the Governor, then any taxpayer whose lands, improvements thereon, or personal property, or any portion thereof, is destroyed by such in any year may be relieved from the payment of taxes and levies upon the same for that year if uncompensated by insurance or otherwise. The statute provides for the method of exoneration and return of taxes charged for the year 1969 upon such property.

TAXATION—VIRGINIA ADOPTS THE UNIFORM FEDERAL TAX LIEN REGISTRATION ACT. *Va. Code Ann. §§ 55-142.1 through 55-142.9* [*New statutes*].

The old federal tax lien registration statutes were repealed and the

Uniform Act adopted. Notices of liens on real estate are to be filed in the clerk's office in which deeds are recorded where the property subject to a federal tax lien is located. Liens on personal property of corporations and partnerships, whose principal office is in Virginia, are to be filed with the State Corporation Commission, while liens on personalty in other cases are to be filed in the clerk's office in which deeds are recorded where the taxpayer resides at the time of filing of the notice of lien.

Other provisions of the Act deal with the marking, indexing, recording, releasing, discharging, or subordinating of such tax liens and the fees therefor. Tax liens filed prior to the effective date of this Act retain their validity under prior law.

This Act simplifies the ascertainment of federal tax liens by requiring central filing with the State Corporation Commission.

TORTS—BLASTING AND GOVERNMENTAL IMMUNITY. *Va. Code Ann. § 8-654.5 [New statute].*

The defense of governmental immunity is not available to any person, firm or corporation doing work for any governmental agency in any cause of action for damages directly resulting from blasting or the use of explosives in the performance thereof.

TRUSTS—APPOINTMENT OF SUBSTITUTE TRUSTEE BY BENEFICIARY. *Va. Code Ann. § 26-49 [Amendment].*

This provision was amended to recite that in any deed of trust agreement, if the trust agreement so provides, substitution of the trustee may be made at the discretion of the beneficiary or beneficiaries for any reason whatsoever. The previous statutory right to appoint a substitute trustee or trustees was restricted to cases of either resignation, death, incapacity or absence from the state of the trustee or trustees.

The provisions of § 55-60(9), which construe the phrase "substitution of trustee permitted" in deeds of trust, were also amended to conform with this statute.

WILLS AND ESTATES—DESCENTS FROM INFANTS. *Va. Code Ann. § 64.1-9 [Repealed].*

This statute formerly provided that if an infant died without an heir

in the first three classes under § 64.1-1, having title to real estate derived by gift, devise or descent from one of his parents, this property descended to kindred on the side of the parent from whom it was derived. If no such kindred were living, it descended to kindred on the side of the other parent.

The effect of repealing this statute is to make the descent of realty from an infant the same as from an adult.

WILLS AND ESTATES—DUTY OF FIDUCIARY REGARDING JOINT ACCOUNTS AND THOSE PAYABLE ON DEATH. *Va. Code Ann. § 64.1-140 [Amendment]*.

This section, as amended, states that a fiduciary is under no obligation to assert a claim on behalf of the decedent's estate to any funds which may, at the time of his death, be on deposit in any financial institution in the name of the decedent and one or more other persons when the terms of the deposit permit payment to either or the survivor unless he is requested in writing by someone in interest, within six months from the date of his qualification on the estate, to assert such a claim.

Previously, no stipulation was in the statute as to the time period within which an assertion must be made by a party in interest. Also, the statute was expanded to include funds on which a claim might be asserted to be on deposit in any financial institution.

WILLS AND ESTATES—JOINTURE IN LIEU OF DOWER. *Va. Code Ann. § 64.1-29 [Amendment]*.

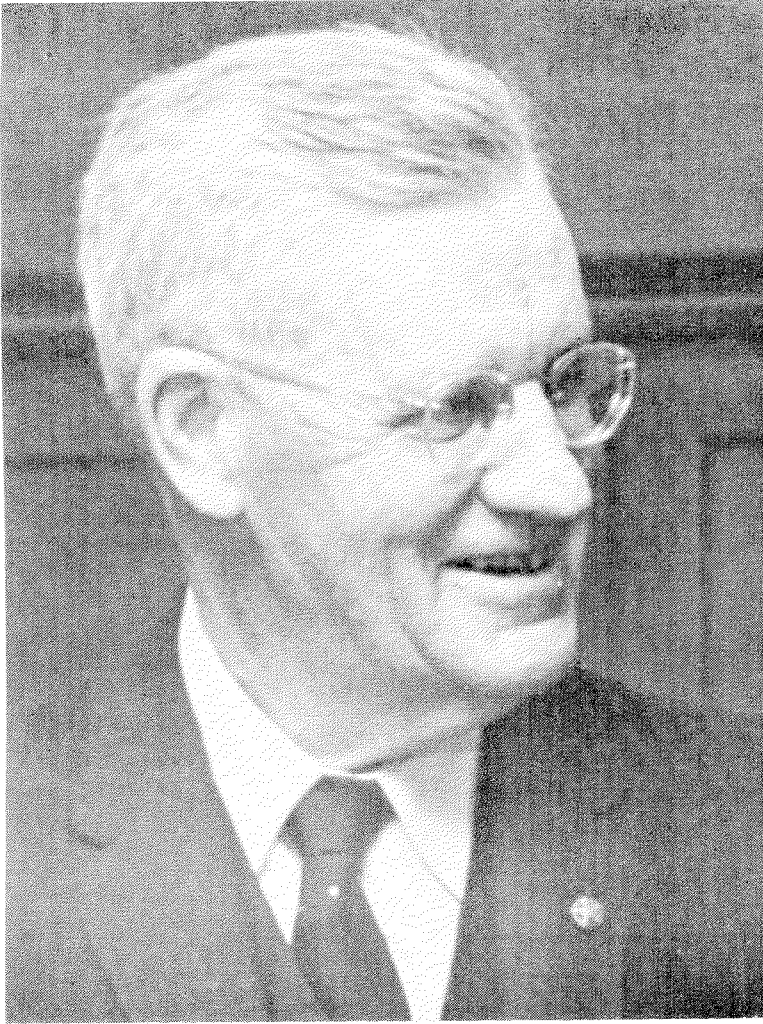
This provision now provides that if any personal property is bequeathed for the jointure of the wife, it will bar her dower in the real estate of her husband unless a contrary intention plainly appears in the will. This statute previously applied only to a devise of realty. A conforming proviso relating to curtesy was enacted in § 64.1-22.

WILLS AND ESTATES—RENUNCIATION PERIOD. *Va. Code Ann. § 64.1-15 [Repealed]*.

This statute allowed a surviving spouse up to six months, subsequent to the expiration of the year following admission of the will to probate, to institute a suit to construe the will and to apply for a court

order allowing the surviving consort up to one month for renunciation after the final decree has been entered in the suit to construe the will.

With the repeal of this statute, the surviving consort is now required in all cases to bring a suit to construe the will within the year, and must renounce the will within the year provided by § 64.1-13, unless an extension can be obtained under § 64.1-14.



JAMES HARMON BARNETT, JR.

