

VIRGINIA BANKERS ASSOCIATION

Updated Counsel's Report

**2022 Session of the Virginia General Assembly
2022 Special Session I of the Virginia General Assembly –
Including 2022-2024 Biennial Budget Amendments**

**DeMarion P. Johnston, Esq.
General Counsel
4490 Cox Road
Glen Allen, Virginia 23060
(804)-819-4714
djohnston@vabankers.org**

Report on Legislation Affecting Banking

This report summarizes legislation of interest to the banking industry passed during the 2022 Session and 2022 Special Session I of the Virginia General Assembly and signed into law by the Governor. All legislation will become effective July 1, 2022, unless otherwise noted. The report is divided into six sections by subject matter:

- A. Banking and Finance
- B. Wills, Trusts, and Estates
- C. Property
- D. Civil Procedure and Remedies
- E. Labor and Employment
- F. Miscellaneous

Many of these summaries are based on summaries prepared by the Division of Legislative Services of the General Assembly. The work of the Division is gratefully acknowledged. The information contained in this report is provided as a service to the banking industry in Virginia and does not constitute legal advice or opinion. Please consult an attorney for advice on specific matters. The text contained in this report is not the official text of the Code of Virginia (hereinafter the “Code”). The full text of the Code and the legislation summarized herein is available at <https://law.lis.virginia.gov/vacode>.

A. BANKING AND FINANCE:

1. H.B. 95 – Furnishing Financial Records to Department of Social Services.

Amends § 63.2-11606 and adds § 6.2-103.1 of the Code.

Requires financial institutions to cooperate in any investigation of alleged adult abuse, neglect, or exploitation conducted by a local department of social services (“DSS”) and to make any financial records or information relevant to such investigation available to the local department of social services upon request. Financial institutions may also voluntarily report information relevant to an adult protective services investigation to DSS or to a court-appointed guardian ad litem (“GAL”) for the adult under investigation. A financial institution will be immune from civil or criminal liability for providing such information to DSS or a court-appointed GAL absent gross negligence or willful misconduct by the financial institution.

2. H.B. 263 – Banks and Virtual Currency Custody Services.

Adds § 6.2-818.1 in Title 6.2 of the Code.

Permits a bank to provide its customers with virtual currency custody services in a fiduciary or nonfiduciary capacity so long as the bank has adequate protocols in place to effectively manage risks and comply with applicable laws. Prior to a bank offering virtual currency custody services, it must carefully examine the risks involved in offering such services through a methodical self-assessment process. If the bank decides to move forward, it must implement effective risk management systems and controls to measure, monitor, and control relevant risks associated with custody of digital assets such as virtual currency; confirm that it has adequate insurance coverage for such services; and maintain a service provider oversight program, to the extent that the bank engages with a service provider to provide virtual currency custody services, to address risks to service provider relationships as a result of engaging in virtual currency custody services.

3. H.B. 496 / S.B. 687 – Financial Exploitation; Vulnerable Adult.

Amends §§ 18.2-60.5, 18.2-178.1, 18.2-369, 46.2-341.20:7, 54.1-3408.3, 54.1-3442.5, 54.1-3442.6, and 54.1-3442.7 of the Code.

Changes the term "incapacitated adult" to "vulnerable adult" for the purposes of the crime of abuse and neglect of such adults and defines "vulnerable adult" as any person 18 years of age or older who is impaired by reason of mental illness, intellectual or developmental disability, physical illness or disability, or other causes, including age, to the extent the adult lacks sufficient understanding or capacity to make, communicate, or carry out reasonable decisions concerning his well-being or has one or more limitations that substantially impair the adult's ability to independently provide for his daily needs or safeguard his person, property, or legal interests. Changes the term "person with mental incapacity" to the same meaning of "vulnerable adult" for the purposes of the crime of financial exploitation.

4. **H.B. 1853** – IOLTAs.

Amends § 54.1-3916 of the Code.

Repealed the provision prohibiting the Supreme Court of Virginia from adopting a disciplinary rule requiring that lawyers deposit client funds in an interest-bearing account. This bill was passed in the General Assembly 2021 Special Session I. Due to a recent change in the Supreme Court of Virginia’s Rules of Court, banks may see an increase in the number of Interest On Lawyer Trust Accounts (“IOLTAs”).

5. **2022 – 2024 BIENNIAL BUDGET** – Security for Public Deposits Act.

Increases the cap on fees charged by the Virginia Department of the Treasury to banks and savings institutions for the management of the Security for Public Deposits Act from \$100,000 to \$200,000. The fees imposed may be lower than the cap.

B. WILLS, TRUSTS, AND ESTATES:

1. **H.B. 370** – Uniform Fiduciary Income and Principal Act.

Adds in Title 64.2 a chapter numbered 10.1, consisting of §§ 64.2-1033 through 64.2-1078; repeals Chapter 10 (§§ 64.2-1000 through 64.2-1032) of Title 64.2 of the Code.

Codifies the Uniform Fiduciary Income and Principal Act, which replaces the prior uniform act to reflect modern trust investment practices in the allocation of principal and income. Includes procedures for trustees administering estates and gives them additional flexibility to administer discretionary trusts to ensure that the intention of the creator of the trust is accomplished. Includes provisions for converting a traditional trust into a "unitrust" to allow for total-return investing.

2. **H.B. 497** / **S.B. 124** – Misuse of a Power of Attorney; Termination.

Amends §§ 64.2-608 and 64.2-16211; adds §18.2-178.2 to the Code.

Makes it a Class 1 misdemeanor for an agent under a power of attorney (“POA”) to knowingly or intentionally engage in financial exploitation of an incapacitated adult who is the principal of that agent. Automatically terminates an agent's authority under the POA upon such conviction.

3. **H.B. 1132** – Payment of Small Amounts Without Fiduciary.

Amends § 8.01-606 of the Code.

Increases from \$25,000 to \$50,000 the amount under which a payment to certain persons may be made without the involvement of a fiduciary.

C. PROPERTY:

1. **S.B. 47 – Housing Opportunity Tax Credits.**

Amends § 58.1-439.30 of the Code.

Makes changes to the new housing opportunity tax credit and increases the amount available to the program from \$15 Million in 2021 to \$60 Million annually in 2022-2025.

2. **H.B. 281– Notice of Lis Pendens.**

Adds §§ 54.1-2138.2 and 55.1-706.1 of the Code.

Requires that an owner of a residential dwelling unit who has actual knowledge of a *lis pendens* filed against the dwelling unit must provide to a prospective purchaser a written disclosure of such fact on a form provided by the Real Estate Board on its website.

3. **H.B. 298 / S.B. 142– Disposition of Delinquent Tax Lands.**

Amends § 58.1-3970.1 of the Code.

Authorizes localities to petition the circuit court to appoint a special commissioner to, in lieu of a sale at public auction, convey certain real estate having delinquent taxes or liens to the locality's land bank entity or an existing nonprofit entity designated by the locality to carry out the functions of a land bank entity. Currently, such real estate may be conveyed only to the locality itself. Also allows real estate that contains a derelict building and has delinquent taxes and liens exceeding 25 percent of its assessed value to be conveyed via special commissioner, in lieu of a sale at public auction, to the locality, the locality's land bank entity, or such existing nonprofit entity. Requires a land bank entity or existing nonprofit entity that receives such parcels to pay any surplusage above the amount of unpaid taxes or liens to the former owners or other parties with an interest in the property.

4. **H.B. 1153 / S.B. 303 – Mortgage Brokers; Dual Compensation.**

Amends §§ 6.2-888, 6.2-1616, and 6.2-1627 of the Code.

Removes dual compensation prohibition for a person who acts as a mortgage broker and real estate broker or salesperson in connection with any real estate sales transaction. A mortgage broker who negotiates, places, or finds a mortgage loan and acts as a real estate broker or real estate salesperson in connection with the sale of the real estate that secures such loan, is required to conspicuously provide to the borrower a written disclosure at the time the mortgage broker services are first offered to the borrower.

5. **H.B. 1194 – Affordable Housing Grants.**

Amends § 15.2-4901 of the Code.

Authorizes an industrial development authority to make grants associated with the construction of affordable housing.

6. **H.B. 1309 / S.B. 756 - Resilient Virginia Revolving Fund.**

Amends §§ 62.1-199 and 62.1-203; adds in Chapter 6 of Title 10.1 an article numbered 1.4, consisting of §§ 10.1-603.28 through 10.1-603.40 of the Code.

Creates the Resilient Virginia Revolving Fund. Provides guidelines for deposits, expenditures, and investments and requires an annual audit of the Virginia Resources Authority. The Fund may be used for loans or to refinance projects for local governments or to give grants to them or by local governments for loans or grants to Virginians eligible for projects for resilience purposes. Establishes guidelines for the priority of such loans and grants. When these resilience loans are secured by liens, such liens will be subordinate to all liens on the property unless all existing lienholders give prior written consent for the resilience liens to rank on parity with liens for unpaid local taxes.

7. **H.B. 1325 – Commercial Property Assessed Clean Energy (C-PACE) Financing.**

Amends § 15.2-958.3 of the Code.

Changes the existing authorization for local governments to finance, by ordinance, clean energy, resiliency, and stormwater management programs to authorize the financing of eligible improvements to eligible properties under C-PACE loan programs. Permits localities to delegate billing, collection, and remittance of C-PACE loan payments to a third party.

8. **H.B. 1364 / S.B. 775 – Real Estate Settlement Agents.**

Amends § 55.1-1006 of the Code.

Clarifies existing law that a seller of real estate can retain a licensed attorney to represent their interests and provide legal advice pertaining to escrow, closing, or settlement services. This bill contained an emergency clause and became effective April 11, 2022.

D. CIVIL PROCEDURE AND REMEDIES:

1. **H.B. 1234 – Enforcement of Judgments.**

Amends § 8.01-251 of the Code.

Allows an execution shall be issued or an action brought on a judgment dated, extended, or renewed, prior to July 1, 2021, including a judgment in favor of the Commonwealth and a judgment rendered in another state or country, up to and including 20 years from the date of such judgment or domestication of such judgment or up to and including 20 years from the date of such extension or renewal of such judgment, whichever is later. Also allows a judgment creditor's assignee or such assignee's attorney or authorized agent to go through the process to extend the limitations period. Under current law, no such execution or judgment may be issued or brought 20 years from the date of such judgment only.

E. LABOR AND EMPLOYMENT:

1. H.B. 1173 / S.B. 631 - Fair Labor Standards Act; Overtime.

Amends §§ 40.1-29, 40.1-29.1, and 40.1-29.2; adds § 40.1-29.3 of the Code.

Replaces the current provisions of the Virginia Overtime Wage Act with the provision that any employer that violates the overtime wage requirements of the federal Fair Labor Standards Act, and any related laws and regulations, shall be liable to its employee for remedies or other relief available under the Fair Labor Standards Act. Requires an employer to compensate employees of a derivative carrier at a rate not less than one and one-half times the employee's regular rate of pay for any hours worked in excess of 40 hours in any one workweek. Requires the Secretary of Labor to convene a work group that includes certain industry representatives and legislators to review overtime issues and the Virginia Overtime Wage Act and requires the work group to submit a report on its findings and recommendations to the Governor and the Chairmen of the House Committees on Appropriations and Commerce and Energy and the Senate Committees on Finance and Appropriations and Commerce and Labor by November 1, 2022.

F. MISCELLANEOUS:

1. S.B. 94 / H.B. 971 – Conformity with the Internal Revenue Code.

Amends §§ 58.1-301, 58.1-322.02, 58.1-322.03, and 58.1-402 of the Code.

Advances Virginia's date of conformity with the Internal Revenue Code from December 31, 2020, to December 31, 2021. Deconforms from provisions of the (i) federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) related to the net operating loss limitation and carryback, a loss limitation applicable to taxpayers other than corporations, the limitation on business interest, and certain loan forgiveness and other business financial assistance and (ii) federal American Rescue Plan Act related to restaurant revitalization grants and emergency injury disaster loans received for taxable years beginning before January 1, 2021. Retroactively allows up to \$100,000 of the individual and corporate income tax deduction or subtraction, as applicable, for Rebuild Virginia grants and certain amounts related to Paycheck Protection Program loans to certain fiscal filers. Allows full deductibility of expenses paid or incurred with forgiven Paycheck Protection Program loan proceeds and expenses paid or incurred with Economic Injury Disaster Loan program funding for taxable year 2021 and thereafter. The bill contained an emergency clause and became effective March 9, 2022.

2. H.B. 224 / S.B. 386 – Income Tax; Corporate Filing Status of Affiliates.

Amends § 58.1-442 of the Code.

For taxable years 2023 and 2024, certain affiliated corporations may elect to switch to or from consolidated corporate income tax return filing status under certain conditions, including the requirement that the affiliated group filed on the same basis for the preceding 20 years. Available only to a group with at least one affiliate that is a bank exempt from filing a Virginia corporate income tax return. Current law requires a group

of corporations to apply to the Tax Commissioner for permission to change the basis of the type of return filed.

3. [S.B. 433](#) / [H.B. 1081](#) – Health Savings Accounts; High Deductible Health Plans.
Amends § 38.2-3407.20 of the Code.

A small subset of non-self-insured HSA plans has been caught in a conflict between existing state law and federal Health Savings Account (“HSA”) requirements. A health plan that complies with state law risks losing its eligibility to contribute to an HSA. Virginia law is amended to clarify that health plans meeting the requirements of Internal Revenue Code (“IRC”) Section 223 are exempt from state law to the extent that the law would disqualify such plans from meeting the requirements of IRS Section 223. If the application of the requirement that a carrier, when calculating an enrollee's overall contribution to any out-of-pocket maximum or any cost-sharing requirement under a health plan, include any amounts paid by the enrollee or paid on behalf of the enrollee by another person results in a health plan's ineligibility to qualify as a HSA-qualified High Deductible Health Plan under the federal Internal Revenue Code, then such requirement shall not apply to such health plan with respect to the deductibility of such health plan until the enrollee has satisfied the minimum deductible required by the federal IRC. Such limitation does not apply with respect to items or services that are considered preventive care.

4. [H.B. 714](#) / [S.B. 534](#) – Consumer Data Protection Act; Enforcement.
Amends §§ 59.1-575 and 59.1-584; repeals § 59.1-585 of the Code.

Authorizes the Attorney General to pursue actual damages to consumers to the extent they exist if a controller or processor of the personal data of Virginians continues to violate the Consumer Data Protection Act following a 30-day cure period offered by the Attorney General or breaches an express written statement provided to the Attorney General. * Financial institutions and data subject to Title V of the federal Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) are exempt from the Consumer Data Protection Act.

5. [H.B. 1006](#) / [S.B. 288](#) – Income Tax; Deductions for Business Interest.
Amends §§ 58.1-322.03 and 58.1-402 of the Code.

Increases from 20 percent to 30 percent the Virginia individual and corporate income tax deduction for business interest disallowed as a deduction under § 163(j) of the Internal Revenue Code for taxable years beginning on and after January 1, 2022.

6. [H.B. 1084](#) / [S.B. 385](#) – Limitation of Local License Taxes.
Amends § 58.1-3703 of the Code.

Prohibits a locality from imposing a license tax on a director of a bank or trust company that is subject to the bank franchise tax.