

VBA NEWS RELEASE

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Virginia Bar Association Reviews Results of 2008 Legislative Activities

RICHMOND, March 17 -- The Virginia Bar Association, the state's oldest and largest voluntary bar association, today highlighted the success of its legislative agenda in the recently completed 2008 Regular Session of the Virginia General Assembly, including improvements to Virginia law in the following areas (references to Chapters are to Acts of Assembly and indicate that the applicable bill has been approved by the Governor as of March 16, 2008; other passed bills had not been acted upon by the Governor as of that date):

- Protecting the best interests of children in custody and visitation cases by repeal of a law which had allowed a parent to arbitrarily block the introduction of evidence relating to his or her own mental condition (VBA Coalition on Family Law Legislation; Senate Bill 330, Quayle/Cuccinelli).
- Removing uncertainty from health care practitioners' employment agreements with hospitals, nursing facilities and medical schools (VBA Health Law Section; House Bill 605, O'Bannon, Ch. 358).
- Updating rules for how charitable institutions manage investments and prudently control expenditures (VBA Wills, Trusts & Estates Section; House Bill 951, Iaquinto, Ch. 184).
- Making the statutory warranty provisions for new homes conform to the comparable provisions applicable to new condominiums, including providing for a tolling of the statute of limitations for six months, allowing the contractor an opportunity to cure and protecting the homeowner from having a warranty claim barred by the expiration of a limitations period (VBA Construction and Public Contracts Law Section; House Bill 1470, Gilbert, Ch. 392).
- Making technical changes to the Virginia Stock Corporation Act and conforming changes to sections of the Virginia Nonstock Corporation Act (VBA Business Law Section; Senate Bill 146, Stosch, Ch. 91).
- Bringing the Virginia Professional Corporation statutes and the Virginia Professional Limited Liability Company Act into alignment and clarifying the permitted ownership of professional business entities (VBA Business Law Section; Senate Bill 209, Stosch, Ch. 265).

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- Affording opportunities for additional funding for lawyers in private practice appointed to represent indigent juvenile criminal defendants (VBA Criminal Law Section; Senate Bill 610, Stolle).
- Establishing a procedure to authorize the withdrawal of civil case appeals from district courts to circuit courts (Boyd-Graves Conference, VBA Civil Litigation Section; Senate Bill 566, Obenshain).
- Supplying specific time guidelines for dealing with a judge's delay in issuing a ruling after taking a case under advisement (Boyd-Graves Conference, VBA Civil Litigation Section; Senate Bill 563, Obenshain).
- Amending Virginia's "Slayer Statute" in several respects, primarily to provide for its application even though the "slayer" is not convicted in a criminal proceeding if he is found in a civil proceeding to have committed the offense (the so-called "O.J. Case"), to reverse the rule prohibiting application of the anti-lapse statute to devises or legacies to the slayer and to make clear that it is not an exclusive law, *i.e.*, one preventing the applicability of common law remedies (VBA Wills, Trusts & Estates Section; House Bill 949, Iaquinto).

In other public interest legislative activity, the VBA actively supported a successful initiative of the Supreme Court of Virginia to reform Virginia's magistrate system (House Bill 903, Putney, Ch. 551; Senate Bill 244, Howell), and the VBA Real Estate Section supplied amendments to a bill related to electronic filing and recording of land records in order to assure the integrity of the land records index (House Bill 1106, Kilgore; Senate Bill 622, Stolle). On behalf of the VBA Coalition on Family Law Legislation, the Association negotiated significant changes to a bill dealing with custody and visitation issues arising between parents where one parent is involved in a military deployment. The principal purpose of the VBA-proposed changes was to safeguard the best interests of the children of such parents. (Senate Bill 188, Herring). House Joint Resolution 101 (O'Bannon), supported by the VBA at the request of its Health Law Section, was left in the House Rules Committee; however, the Joint Commission on Health Care has undertaken to carry out the purpose of the resolution, *i.e.*, to study the use of disclosure, apologies, alternative dispute resolution and other measures in the case of medical errors and adverse medical outcomes and the impact of such measures on the cost and quality of care, patient confidence and the medical malpractice system.

Among measures proposed or supported by the Association in the 2008 regular session of the General Assembly which did not pass but are matters of continuing interest are bills giving indigent criminal defendants in capital cases the right to an ex parte hearing for appointment of expert witnesses (VBA Criminal Law Section; Senate Bill 369, Watkins; continued to 2009 in House Courts of Justice), adopting a modified version of the Uniform Power of Attorney Act (VBA Wills, Trusts & Estates Section; House Bill 950, Iaquinto; left in House Commerce and Labor Committee), allowing an appeal, without the posting of a bond, of the current support portion of a juvenile and domestic relations district court order including both current support and support

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arrearrage (Boyd-Graves Conference; Senate Bill 564, Obenshain; passed by indefinitely in Senate Courts of Justice Committee), promoting use of restorative justice processes in Virginia courts (VBA-VSB Joint ADR Committee; House Bill 1290, Athey; left in House Courts of Justice Committee) and addressing issues related to determination of the privileged or non-privileged status of factual information developed by a hospital peer review committee (VBA Health Law Section; House Bill 382, O'Bannon; continued to 2009 in House Courts of Justice Committee). Also, because of concerns of the VBA Wills, Trusts & Estates Section related to the loss of flexibility in applying the Slayer Statute, the VBA did not support a successful effort to amend the Statute to add voluntary manslaughter to the definition of "slayer" (Senate Bill 450, Petersen).

A principal mission of The Virginia Bar Association is to improve the law and administration of justice in Virginia. In that connection, it actively supports changes in statutes, rules and regulations which are in the public interest and opposes changes that do not serve the public interest. In addition to responding to proposals for improving the law generated by its multiple sections and committees and approved by its board of governors, the Association provides additional logistical and lobbying support for two organizations with which it has familial relationships, the Boyd-Graves Conference and the VBA Coalition on Family Law Legislation. The Boyd-Graves Conference is a group of experienced civil trial lawyers and judges which, acting by consensus of its membership, makes recommendations concerning needed changes to the Rules of Court of the Supreme Court of Virginia and the Code of Virginia relating to state court civil litigation in Virginia. The VBA Coalition on Family Law Legislation includes representatives of a broad range of statewide and local bar associations and other organizations of lawyers, including the VBA Domestic Relations Section and the VBA Commission on the Needs of Children, whose practice or area of expertise is concentrated in family law and who are committed improving the law in that area.

VBA executive director Guy Tower, who directs legislative activity for the Association, noted that its work on several of the matters on its 2008 legislative agenda involved cooperative efforts with various other organizations, including, in addition to the Boyd-Graves Conference and the VBA Coalition on Family Law Legislation, the Virginia Trial Lawyers Association, the Virginia Chapter of the American Academy of Matrimonial Lawyers, the Virginia Indigent Defense Commission, the Virginia Association of Criminal Defense Lawyers and the Office of the Executive Secretary of the Supreme Court of Virginia. Speaking on behalf of the board of governors of the VBA, Tower extended appreciation to each of these organizations and their representatives as well as to the Association's principal lobbyists, Rob Jones and Anne Leigh Kerr and their colleagues at the Alliance Group and Troutman Sanders Public Affairs Group, respectively, and especially to the many VBA members who voluntarily devoted their time and skills to drafting and advocacy before and during the Session.

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