

2010 VIRGINIA GENERAL ASSEMBLY

Summary of General Labor, Employment Law, & Health Insurance Issues

GENERAL LABOR & EMPLOYMENT LAW

PASSED

HB 737/Albo - E-verify. Requires the Commonwealth to enroll in the federal e-verify program by December 1, 2012 and to use the program for each new hire. *(As introduced, the requirement applied to most employers and was opposed by business.)*

FAILED

HB 171/Pogge - firearms in locked vehicles. Provides, with some exceptions, that no person, property owner, tenant, employer, or business owner may prohibit a person from storing a firearm in a locked motor vehicle while on their property. *(The business community opposed this measure.)*

HB 280/Albo - union organization. Provides that any person who fails to provide information regarding the consequences of a signature, a vote, or an affirmation by another; or by fraud, material artifice, trickery, or deception causes or assists in causing a vote to be taken by non-union employees on whether to organize a union, is guilty of a Class 1 misdemeanor. *(This bill is largely preempted by federal law.)*

HB 454/Herring - employment discrimination. Expands the protection for employees for discrimination by certain employers (those having more than five but less than 15 employees) for failure or refusal to hire or for otherwise discriminating against any individual with respect to his compensation, terms, conditions, or privileges of employment on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, including lactation, or of age if the employee is 40 years old or older. *Currently, causes of action are limited to wrongful discharge. (This bill would have upset an earlier Chamber law change that provided the current remedy.)*

HB 455/Herring - discrimination by public employers based on genetic characteristics. Prohibits the Commonwealth and other public bodies from taking adverse employment actions based on genetic testing or genetic characteristics. *Such actions are currently prohibited if taken by private employers.*

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HB 1116/Ebbin – employment discrimination. Prohibits discrimination in public employment based on race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, or status as a veteran. **SB 66/McEachin is similar.**

SB 34/Lucas - Worker Misclassification Act. Prohibits an employer from classifying an individual as an independent contractor if he is an employee. Violators are subject to criminal penalties, civil penalties, debarment from public contracts, private actions, and stop-work orders. *(The business community opposed this measure.)*

SB 225/Barker – E-verify. Requires all public contractors and subcontractors to use the federal e-verify program (or similar program) to determine their employees’ legal work status. *(The business community opposed this measure.)*

SB 281/Quayle - child labor. Authorizes the participation by children of any age in all activities of any nonprofit entity organized to provide for the care of animals. However, children 13 and younger may participate only if accompanied by a parent.

SB 377/Puckett - Workplace Fraud Act. Establishes penalties for employers providing construction services that wrongly classify their employees as independent contractors. The measure imposes civil penalties on employers who violate its provisions. *(The business community opposed this measure.)*

HEALTH CARE INSURANCE

PASSED

HB 10/R. Marshall; SBs 283/Quayle; 311/Martin; 417/Vogel - individual health insurance coverage; requirement to obtain. Provides that a resident of the Commonwealth shall not be required to obtain or maintain a policy of individual insurance coverage. **Also includes HBs 576/Cole, 722/Peace.**

HB 258/McClellan - individual coverage. Expands the scope of who is “eligible” for purposes of guaranteed availability of individual coverage regardless of health status to include persons whose most recent prior creditable coverage was under the Commonwealth's Medicaid plan.

HB 315/McClellan - coverage under group policy. Expands the ability of a person who becomes ineligible for coverage under a group policy to exercise the option to continue coverage under the policy. The measure extends (i) the maximum length of continued coverage from 90 days to 12 months; (ii) allows premiums to be paid monthly; and (iii)

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requires the policyholder to inform the persons insured under the group policy of the option. The notice shall be provided within 14 days of the policyholder's knowledge of the covered person's loss of eligibility under the group policy. The measure also retains the policyholder's option to have the issuer issue an individual policy to the covered person who loses eligibility, and the maximum period for applying for such a policy is extended from 31 to 60 days after loss of eligibility.

HB 317/McClellan - group health insurance; enrollment opportunities. Requires group health insurance policies, health services plans, and health care plans to offer enrollment opportunities for employees and dependents who are eligible for coverage under, but not enrolled in, such policies or plans upon their (i) losing eligibility for coverage under the Commonwealth's Medicaid or FAMIS program or (ii) becoming eligible for premium assistance under either program. In order to enroll, the employee or dependent must request coverage within 60 days of being terminated from coverage under the state program or 60 days of becoming eligible for premium assistance. Employers providing such policies or group plans are required to notify employees of their potential eligibility for premium assistance under these state programs and to disclose to the Department of Medical Assistance Services, upon request, information to permit the Department to determine the cost-effectiveness of any premium assistance provided. The measure implements certain provisions of the federal Children's Health Insurance Program Reauthorization Act of 2009, and applies to corporations issuing subscription contracts, HMOs, and insurers.

HB 548/D. Marshall - wellness programs. Allows group policies to provide a discount to employers who institute employee wellness programs. The bill also allows an employer instituting and maintaining an employee wellness program to require any employee wishing to enroll to undergo a health assessment as a condition of enrollment.

HB 554/D. Marshall - COBRA continuation coverage. Requires small employers providing group coverage to offer to certain employees whose employment is involuntarily terminated the option to continue their coverage for any additional period, extending beyond the nine months of COBRA continuation coverage that is currently required, as may be specified by future amendments to the American Recovery and Reinvestment Act.

HB 556/D. Marshall; SB 642/Reynolds - availability of basic insurance. Authorizes HMOs to offer and sell to small employers group plans that do not include all of the state-mandated health insurance benefits. *Currently, such limited coverage may be offered by health insurers and corporations providing policies, subscription contracts, or evidence of coverage.*

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HB 1095/Sickles – individual coverage; COBRA period. Sets the parameters of the period an individual is not covered by health insurance as beginning the day after an individual's termination of coverage and ending when an application for coverage is submitted. When an application is submitted by mail, the date of the postmark is the date the application is submitted.

HB 1263/L. Ware; SB 622/Wampler - dental plans. Prohibits a contract between a dental plan and a dentist or oral surgeon from establishing the fee or rate that the dentist or oral surgeon is required to accept for the provision of services, or from requiring that a dentist or oral surgeon accept the reimbursement paid by the dental plan as payment in full unless the services are covered under the plan. *(As introduced, the business community opposed these measures because they prohibited discounts beyond the annual cap and asked the General Assembly to rewrite contracts.)*

HB 1375/Garrett - prescription drug benefits; standard reference compendia. Replaces obsolete publications from the list of standard reference compendia with existing approved publications. The measure revises the compendia for both private health insurance and the state employee's health insurance plan.

HB 1377/Sickles - program for residents of other state. Provides that if another state enacts a law that requires a nonprofit health service plan operating in Virginia to provide a specified program for residents of the other state the SCC may hold a hearing to evaluate the impact of the law on the health services plan. The SCC shall direct the Commissioner of Insurance to conduct an examination of the health services plan. The measure authorizes the SCC to issue orders to protect residents of the Commonwealth.

HJ 99/Stolle - study; catastrophic coverage. Directs the Joint Commission on Health Care to study catastrophic coverage options.

SB 163/Edwards – HSAs, exemption from creditors' claims. Exempts moneys paid into or out of, the assets of, and the income of a HSA from creditor process.

SB 477/Watkins - small employers. Clarifies that group policies and contracts sold to a small employer are required to include coverage for mammograms, pap smears, PSA testing, and colorectal cancer screening. *The measure reconciles an inconsistency in 2009 legislation that arose when it was amended at the Governor's request during the reconvened session to require such policies to include these four mandated procedures.*

SB 675/Wampler - mandated coverage for telemedicine services. Requires health insurers, health care subscription plans, and HMOs to provide coverage for the cost of services provided through telemedicine services. "Telemedicine services" means the use of interactive audio, video, or other electronic media for the purpose of diagnosis,

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consultation or treatment. Utilization review may be undertaken to determine the appropriateness of telemedicine services. *A similar house bill, HB 1182/Phillips, failed.*

SB 706/Houck - coverage for mental health and substance abuse services. Requires that group coverage issued to large employers provide mental health and substance use disorder benefits in parity with the medical and surgical benefits contained in the coverage, in accordance with the Mental Health Parity and Addiction Equity Act of 2008.

FAILED

HB 12/R. Marshall - coverage for children. Allows coverage under a group policy to be extended to an insured group member's child who is under the age of 27. *Currently, such coverage may be extended to a child who is under the age of 19, or the age of 25 if the child is a dependent or full-time student. Coverage may also be extended beyond this age limit if agreed by the insurer and policyholder.*

HB 31/R. Marshall - plans offered by foreign health insurers. Authorizes any foreign health insurer approved by any other state to sell a group plan that is offered in the insurer's domiciliary state to sell to persons in Virginia. **HBs 536/D. Marshall; 720/Peace are similar.**

HB 198/L. Ware - pharmacy contracts. Establishes requirements for audit procedures with respect to contracts between a carrier and its pharmacy benefits administrator, or between a carrier and a participating pharmacy provider or its contracting agent.

HB 303/O'Bannon – expanded coverage for autism spectrum disorder. Requires health insurers, health care subscription plans, and HMOs to provide expanded coverage for individuals with an autism spectrum disorder until they reach age 10. This requirement does not apply to individual or small group policies, contracts, or plans, and will not apply to the state employees' plan until July 1, 2015. **HB 34/R. Marshall is included. SBs 464/Howell; 649/Stosch are similar. (The business community opposed these measures.)**

HB 339/R. Marshall - foreign insurers; reciprocal licensing. Requires the SCC to issue a license authorizing a foreign insurer to transact business in Virginia if the foreign insurer's home state issues licenses to insurers incorporated or organized under Virginia's laws on the same basis, etc.

HB 440/Toscano - coverage of children. Provides that a group policy that provides coverage for dependent children shall make available such coverage, at the option of the insured group member, for one or more of the member's children who are under age 27 and without certain types of coverage. An insured group member who opts to provide

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coverage for such children is required to pay any additional premium. The measure also increases the maximum age of dependent children who may be covered under a group policy from 24 to 25 years, unless otherwise agreed. Finally, the measure expands who constitutes an eligible family member under an individual policy to include children not greater than 25 years and children who meet the measure's qualifications for coverage with respect to a group policy.

HB 539/D. Marshall - minimum number of covered persons. Provides that a decrease in the number of persons covered by a group policy to fewer persons than the minimum group size, during the term of the policy, will not constitute grounds for the insurer to cancel the policy or otherwise affect the policy with regard to any remaining covered person. *Currently, a group policy is required to cover at least two persons other than spouses or minor children, unless the spouse or minor child is an eligible employee.*

HB 541/D. Marshall - group coverage. Allows coverage under a group policy to be extended to insure any parent of the insured group member if such parent is not engaged in any position of employment or in any business activity and resides in the same household as the insured group member.

HB 730/Albo - early intervention services; autism. Prohibits an insurer that provides coverage for early intervention services from denying coverage for medically necessary speech and language therapy, occupational therapy, physical therapy, applied behavior analysis, and assistive technology services and devices because a covered minor dependent has been diagnosed with autism.

HB 1094/Sickles - mandated benefits for colorectal cancer screening. Prohibits a policy from requiring a separate copayment, coinsurance, or deductible for any diagnostic or surgical procedure performed in conjunction with and at the time of a colorectal cancer screening that involves the removal or collection of cells, tissue, or polyps for diagnostic or curative purposes.

HB 1294/R. Marshall - efficiency information. Requires the Commissioner of Insurance to collect data regarding the efficiency of health care operations in Virginia.

HB 1357/LeMunyon - autism spectrum disorder plans offered by foreign health insurers. Authorizes a foreign health insurer to sell in Virginia a plan providing coverage for autism spectrum disorder services if the insurer offers a plan with substantially identical coverage in its own state.

HJ 28/Purkey - study; small business pooling. Establishes a joint subcommittee to study whether state laws and regulations impede the ability of small businesses to act collectively in procuring insurance.

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HJ 35/O'Bannon - study; insurance reform. Establishes a joint subcommittee to recommend reforms to the state's private health insurance system.

HJ 191/Peace - insurance choice. Requests the Secretary of Commerce and Trade, in consultation with the SCC, appropriate business and trade associations, and independent agent trade organizations to develop a blueprint for greater insurance choice in the Commonwealth.

UNEMPLOYMENT INSURANCE

PASSED

HB 535/Nixon - minimum earnings requirement. Postpones by one year the second scheduled increase (from \$2,700 to \$3,000) in the minimum amount of wages an employee must have in order to be eligible for benefits. *(The business community offered and supported this effort.)*

HB 550/D. Marshall - repayment of benefits. Allows the Virginia Employment Commission (VEC) to negotiate the terms of repayment for benefits to which a recipient is not entitled.

FAILED

HB 177/Morrissey - eligibility of seasonal tax preparation service employees. Disqualifies a seasonal employee of a tax preparation firm from receiving benefits outside of the tax preparation season if the individual was notified in writing at the time of his hiring that his employment is only for the term of the tax preparation season.

HB 178/Morrissey - eligibility of seasonal or temporary workers. Disqualifies an unemployed individual for benefits if he was provided with written notice, and signed an acknowledgment of receipt of such notice, by his employer stating that his employment is temporary or seasonal and will be terminated by a date certain or upon the completion of seasonal work specified in the written notice.

HB 252/Merricks - waiver of overpayment. Requires the VEC to waive an individual's obligation to repay benefit overpayments under certain circumstances.

HB 647/Armstrong - UI Modernization, part-time employment and training programs. Provides that certain individuals who have exhausted eligibility for benefits and who are enrolled in approved training programs are eligible for up to 26 weeks of additional benefits. The bill also waives the current law requirement that individuals

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receiving these benefits must be looking for full-time work. Additionally, the measure provides benefits to certain individuals seeking only part-time work. Both expanded provisions are part of the \$7 billion “UI modernization” effort encouraged in the 2009 stimulus bill. *(The business community opposed this measure as an unwarranted expansion of benefits.)*

HJ 23/R. Marshall – study; claims hearings. Directs the Joint Legislative Audit and Review Commission (JLARC) to study the effectiveness of deputy-level claims hearings.

HJ 49/Merricks - study; benefit overpayments. Directs JLARC to study benefit overpayments caused by VEC administrative errors.

SB 239/Watkins – UI Modernization, compelling reason and training programs. Provides that certain individuals who have exhausted eligibility for benefits and who are enrolled in approved training programs are eligible for up to 26 weeks of additional benefits. The bill also waives the current law requirement that individuals receiving these benefits must also be looking for full-time work. Additionally, the measure provides that an individual who voluntarily quits work for a “compelling reason” is eligible for benefits. With some exceptions, benefits are not now paid for voluntary quits. Both expanded provisions are part of the \$7 billion “UI modernization” effort encouraged in the 2009 stimulus bill. SBs 562/Puckett and 666/Locke are incorporated. *(The business community opposed this measure as an unwarranted expansion of benefits.)*

WORKERS’ COMPENSATION INSURANCE

PASSED

HB 603/Loupassi; SB 611/Edwards - notices. Authorizes the Commission to satisfy its obligations to provide copies of notices, opinions, orders, and awards by sending them by electronic communications in the manner prescribed by the Commission.

HB 705/Merricks; SB 612/Wagner. Repeals provisions that require the Commission to send copies of awards by priority mail with delivery confirmation or equivalent mailing option. The measure also increases the period in which an application for review of an award may be made from 20 to 30 days.

HB 761/D. Marshall; SB 610/Edwards - filings. Expands the options for filing materials with the Commission to include means of electronic transmission that have been approved by the Commission.

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HB 807/Poindexter; SB 597/Wampler - proof of coverage. Authorizes workers' compensation insurance carriers to file proof of coverage within 30 days of an insurance policy's inception. The filing shall be made electronically in the form prescribed by, and to the agent designated by, the Commission.

**William L. Dudley, Jr. was reappointed to serve another six year term on the Commission.

FAILED

HB 156/Dance - occupational disease presumption. Expands the presumption that specific types of cancers in firefighters and certain other public safety employees are occupational diseases compensable under the Act to include kidney cancer and any other type of cancer that results from the inhalation, ingestion, or absorption of a toxic substance.

HB 446/L. Ware - exclusion of certain employees. Excludes a person from coverage if his injury, disability, or death is covered by or eligible for benefits under the Longshore and Harbor Workers' Compensation Act or the Jones Act.

HB 955/Ligamfelter - occupational disease presumption. Adds salaried and volunteer lifesaving and rescue squad members to the list of public safety personnel who are entitled to a presumption that hypertension and heart disease are occupational diseases suffered in the line of duty that are covered under the Act.

HB 1326/Merricks; SB 367/Puckett - medical services. Provides that a health care provider rendering medical services outside Virginia to an injured worker whose claim and injuries have been accepted as compensable under the Act shall be reimbursed for authorized, reasonable and necessary medical treatment in an amount equal to the workers' compensation fee schedule, if any, adopted by that state. If the other state does not have a fee schedule, the provider will be reimbursed based on the charges prevailing in the same community for similar treatment when the treatment is paid for by the injured person. The measure also directs the Commission to appoint a task force to develop recommendations relating to reductions or discounts for multiple surgical procedures performed during a single operative session, liability for the costs of assistants-at-surgery, and whether prompt payment to medical providers should be required. *(Both bills were offered by the BCWC. The Senate Committee on Commerce & Labor will direct, by letter, the Commission to conduct the study.)*

HB 1346/Barlow - occupational disease presumption limitation. Establishes a limitations period during which a public safety employee may bring a claim for hepatitis at two years after the employee receives notice of a positive test for exposure to hepatitis.

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The limitation applies only to those public safety employees who are entitled to the existing presumption that hepatitis is an occupational disease. *Existing law provides that the limitations period for claims involving hepatitis is the earlier to occur of (i) two years after a diagnosis of the disease is first communicated to the employee or (ii) five years from the date of the last injurious exposure in employment.*

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