

# **VIRGINIA BANKERS ASSOCIATION**

## **Counsel's Report**

**2020 Special Session I of the Virginia General Assembly  
2021 Session of the Virginia General Assembly  
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## **Report on Legislation Affecting Banking**

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This report summarizes legislation of interest to the banking industry passed during the 2020 Special Session I, 2021 Session, and 2021 Special Session I of the Virginia General Assembly and signed into law by the Governor. All legislation will become effective July 1, 2021, unless otherwise noted. The report is divided into four sections by subject matter:

- A. Banking and Finance
- B. Property
- C. Civil & Criminal Procedure
- D. 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. 1853 – IOLTA Accounts.**

*Amends §§ 54.1-3916 and repeals 54.1-3915.1 of the Code.*

Repeals the provision prohibiting the Supreme Court of Virginia from adopting a disciplinary rule requiring that lawyers deposit client funds in an interest-bearing account (Interest on Lawyers Trust Accounts (IOLTA) program).

**2. H.B. 1916 / **S.B. 1112** – **Research and Development Expenses; Credit Against Bank Franchise Tax.****

*Amends §§ 58.1-439.12:08 and 58.1-439.12:11 of the Code.*

Makes the research and development expenses tax credit and the major research and development expenses tax credit available against the bank franchise tax for taxable years beginning on and after January 1, 2021.

**3. H.B. 1919 – Local Green Banks.**

*Adds § 15.2-958.3:1 of the Code.*

Authorizes a locality, by ordinance, to establish a green bank to promote investment in clean energy technologies in that locality and provide financing for the same. Establishes powers and functions of a green bank, including developing rules and procedures, financing and providing loans for clean energy projects, and stimulating demand for renewable energy. A green bank may take the form of a public entity, quasi-public entity, depository bank, or nonprofit entity, and is required to offer private lending institutions the opportunity to participate in the green bank.

**4. H.B. 1935 / **S.B. 1146** – **Income Tax Conformity; PPP Loans.****

*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, 2019, to December 31, 2020. Deconforms from the suspension of the overall limitation on itemized deductions and the reduction in the medical expense deduction floor for taxable year 2017 and taxable years on and after January 1, 2019, and from the provisions of the 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. Provides an individual and corporate income tax deduction or subtraction, as applicable, of up to \$100,000 for Rebuild Virginia grants and certain amounts related to Paycheck Protection Program loans. Effective March 15, 2021.

**5. H.B. 2018 / **S.B. 1297** – **Adult Financial Exploitation; Emergency Order.****

*Amends §§ 63.2-1603, 63.2-1606 and 63.2-1609 of the Code.*

Allows a circuit court to enter an emergency order for adult protective services upon a finding that an incapacitated adult has been subjected to financial exploitation. The order may impose conditions on the alleged perpetrator, including: prohibiting acts or criminal offenses that may result in injury; prohibiting contacts by the alleged perpetrator with the adult or the adult's family or household members; or other conditions to prevent financial exploitation. Violations of the emergency protective order are a Class 1 misdemeanor.

6. **H.B. 2099** – **Limitations on Enforcement of Judgments; Release of Judgment Liens.**  
*Amends §§ 8.01-251, 8.01-458, and 55.1-339 of the Code.*

Reduces from 20 to 10 years from the date of a judgment the period of time within which an execution may be issued or action may be taken on such judgment. The enforcement period may be extended up to two additional 10-year periods by recording a certificate of extension prior to the expiration period in the clerk's office in which the judgment lien is recorded. Also allows a settlement agent or title insurance company to release a judgment lien, in addition to a deed of trust as provided under current law, provided that the obligation secured by such judgment lien has been satisfied by payment made by the settlement agent and whether the settlement agent or title insurance company is named as a trustee under such lien or received authority to release such lien.

7. **H.B. 5068** – **Emergency Relief Payments; Automatic Exemption From Creditor Process.**  
*Amends §§ 8.01-512.4 and adds 34-28.3 of the Code.*

Automatically exempts from the creditor process emergency relief payments paid to individuals. Requires a financial institution receiving such payments directly from the federal government to exempt the payments from the creditor process. If a financial institution does not set aside such payments as exempt, the accountholder receiving such payments must claim the exemption. Effective October 28, 2020. [Amendment 18](#) to the Budget removed the dollar limits in the law so that the full amount of emergency relief payments is exempt from the creditor process.

## **B. PROPERTY:**

1. **S.B. 1197** – **Virginia Housing Opportunity Tax Credit.**  
*Adds §§ 58.1-439.29 and 58.1-439.30 of the Code.*

Establishes, for taxable years 2021 through 2025, a Virginia housing opportunity tax credit, equal to the amount of the federal low-income housing tax credit allocated or allowed by the Virginia Housing Development Authority to a low-income building that is eligible for the federal credit. The credit is nonrefundable and can be carried forward for up to five years. There is a maximum of \$15 million in credits granted per calendar year.

2. **H.B. 1882** – **Deeds of Trust.**

*Amends §§ 55.1-319 and adds 55.1-318.1 of the Code.*

A deed of trust securing residential real estate that has been recorded and that secures indebtedness or other obligations under a loan document may, if certain conditions are met, be amended, modified, supplemented, or restated without the necessity of recording an amendment to the deed of trust. Requires that the interest rate of a prior mortgage be stated on the first page of a refinance mortgage.

3. **H.B. 2064** – **Recording an Electronic Document.**

*Amends §§ 17.1-223, 47.1-2, 47.1-16, and 55.1-606 of the Code.*

Requires a circuit court clerk that has an eRecording System to follow the provisions of the Uniform Real Property Electronic Recording Act. A circuit court clerk that does not have an eRecording System is required to record a legible paper copy of an electronic document, provided such copy otherwise meets the requirements for recordation and is certified to be a true and accurate copy of the electronic original by the party who submits the document for recordation. Defines an “electronic notarization” as a notarization where the signer is not in the physical presence of the notary. Requires an electronic notarial certificate to include the county or city in the Commonwealth where the notary public was physically located and indicate whether the notarization was performed in person or by remote online notarization. Adds additional forms of “satisfactory evidence of identity” when a notary is using video and audio communication. Effective March 11, 2021.

4. **H.B. 2175** / **S.B. 1327** – **Foreclosures.**

*Amends §§ 8.01-463, 36-139, 55.1-320, 55.1-321, and 55.1-1303; and adds 15.2-2223.5 of the Code.*

Reduces the circumstances under which a court may order a person's primary residence to be sold to enforce a judgment lien. Requires a trustee under a deed of trust securing owner-occupied residential real estate to obtain an affidavit signed by the party that provided notice of the foreclosure sale to the property owner confirming that such notice was sent, along with a copy of the notice attached to the affidavit. Also requires the trustee, prior to commencing a foreclosure sale with respect to such real estate, to provide copies of the affidavit and notice, with any personal financial information redacted, to each potential bidder. Increases the notice period for a foreclosure sale for owner-occupied residential real estate from 14 to 60 days and requires that the notice contain information regarding housing counseling. The foreclosure notice requirements related to providing information about housing counseling have a delayed effective date of October 1, 2021.

5. **H.B. 2229** – **Foreclosure of Single-Family Residential Dwelling Units.**  
*Amends §§ 54.1-2108.1 and 55.1-1237 of the Code.*

Provides that if a dwelling unit used as a single-family residence is foreclosed upon and there is a tenant in such dwelling unit on the date of the foreclosure sale, if the successor in interest acquires the dwelling unit for the purpose of occupying such unit as his primary residence, the rental agreement terminates and the tenant is required to vacate the dwelling unit on a date not less than 90 days after receiving written notice. If, however, the successor in interest acquires the dwelling unit for any other purpose, the interest in the dwelling unit is subject to the rental agreement and the tenant is permitted to occupy the dwelling unit for the remaining term of the lease.

**C. CIVIL & CRIMINAL PROCEDURE:**

1. **S.B. 1261** – **Court of Appeals.**  
*Amends § 17.1-400 and other sections of the Code.*

Expands the jurisdiction of the Court of Appeals of Virginia by providing for an appeal of right in every civil case and provides that the granting of further appeal to the Supreme Court of Virginia shall be within the discretion of the Supreme Court. Increases from 11 to 17 the number of judges on the Court of Appeals. Delayed effective date of January 1, 2022, except for the increase in the number of judges on the Court of Appeals which shall become effective in due course.

2. **H.B. 2113** / **S.B. 1339** – **Sealing of Criminal Records.**  
*Amends §§ 9.1-101, 9.1-128, 9.1-134, 17.1-293.1, 17.1-502, 19.2-72, 19.2-74, 19.2-310.7, 19.2-340, 19.2-389.3, and 19.2-390; and adds 17.1-205.1, and 19.2-392.5 through 19.2-392.17 of the Code.*

Establishes a process for the automatic sealing of police and court records for certain convictions, deferred dispositions, and acquittals and for offenses that have been *nolle prossed* or otherwise dismissed. Allows a person to petition for the sealing of police and court records relating to certain convictions. Prohibits certain private employers from requiring in the hiring process applicants for employment to disclose information concerning any arrest, criminal charge or conviction when such record has been sealed. Staggered delayed effective dates in order to develop systems for implementation.

**D. MISCELLANEOUS:**

1. **S.B. 1160** – **Department of Motor Vehicles and Liens.**  
*Amends §§ 46.2-644.01, 46.2-644.02, 46.2-644.03, 46.2-1200.2, 46.2-1202, 46.2-1202.1, 46.2-1203, 46.2-1209, and 46.2-1212.1; and adds 46.2-644.04, 46.2-1200.3 and 46.2-1202.2 of the Code.*

Modernizes the enforcement of mechanics' and storage liens by (i) transferring notification and auction posting requirements to the Department of Motor Vehicles; (ii)

allowing for independent appraisals to establish accurate vehicle values; (iii) expanding vehicle owner searches to other states and requiring the DMV to notify owners in those states; and (iv) creating a limited process for relinquishing mechanics' and storage liens. Provisions related to mechanics' and storage liens have a delayed effective date of January 1, 2022.

2. **[H.B. 1848](#)** – **Virginia Human Rights Act; Discrimination on the Basis of Disability.**  
*Amends §§ 2.2-3902, 2.2-3905, and 51.5-41; and adds 2.2-3905.1 of the Code.*

Adds discrimination on the basis of disability as an unlawful discriminatory practice under the Virginia Human Rights Act. Requires employers to make reasonable accommodation to the known physical and mental impairments of an otherwise qualified person with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship. Prohibits employers from taking any adverse action against an employee who requests or uses a reasonable accommodation, from denying employment or promotion opportunities to an otherwise qualified applicant or employee because such employer will be required to make reasonable accommodation to the applicant or employee, or from requiring an employee to take leave if another reasonable accommodation can be provided to the known limitations related to the disability.

3. **[H.B. 2063](#)** – **Virginia Overtime Wage Act.**  
*Amends §§ 40.1-29 and 40.1-29.1; and adds 40.1-29.2 of the Code.*

Requires an employer to compensate certain employees 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. The civil and criminal penalties for an employer's failure to pay such overtime wages are the same as currently provided for failing to pay wages generally. There is a three year statute of limitations for bringing a claim for a violation.

4. **[H.B. 2121](#)** – **Virginia Stock Corporation Act.**  
*Amends §§ 13.1-610, 13.1-625 and [other sections](#) of the Code.*

Notice to shareholders is not required for a shareholder for whom notice of two consecutive annual meetings and all notices of meetings in between, or all distributions in a 12-month period or two consecutive distributions in a period of more than 12 months, have been sent and have been returned undeliverable or could not be delivered. Authorizes a board of directors to adopt certain emergency bylaws and exercise its emergency powers when there is a catastrophic event, including, among other things, an epidemic or pandemic, that affects the corporation and regardless of whether a quorum of the board of directors or a committee can be readily convened for action. Authorizes a board of directors to take any action it deems practicable and necessary to address the circumstances of the emergency, including (i) postponing any meeting; (ii) for certain corporations, notifying shareholders of any such postponement by filing with the U.S. Securities and Exchange Commission; and (iii) for a distribution that has been declared by the record date that has not occurred, canceling distribution or changing the amount of distributions, or changing the record date or the payment date of such distributions.

5. **H.B. 2161 / S.B. 1410 – Discrimination on the Basis of Military Status.**

*Amends §§ 2.2-2901.1, 2.2-3004, 2.2-3900, 2.2-3901, 2.2-3902, 2.2-3904, 2.2-3905, 15.2-853, 15.2-854, 15.2-965, 15.2-1500.1, 15.2-1507, 15.2-1604, 22.1-295.2, 22.1-306, 36-96.1 through 36-96.3, 36-96.4, 36-96.6, 55.1-1208, and 55.1-1310 of the Code.*

Prohibits discrimination in public accommodations, employment, and housing on the basis of a person's military status, which is defined as a member of the uniformed services of the United States or a reserve component thereof or a spouse or other dependent of the same. Prohibits terms in a rental agreement in which the tenant agrees to waive remedies or rights under the federal Servicemembers Civil Relief Act prior to the occurrence of a dispute between the landlord and the tenant.

6. **H.B. 2174 – State-Facilitated IRA Savings Program.**

*Amends § 23.1-701 and adds 2.2-2744 through 2.2-2757 of the Code.*

Directs the governing board of the Virginia College Savings Plan to establish a state-facilitated individual retirement account savings program. Requires participation by any nongovernmental employer that employs 25 or more eligible employees and does not offer a qualified retirement plan to its employees. Eligible employees, including individuals who are employed at least 30 hours per week, are required to be enrolled in the Program unless the employee elects not to participate. Provides that participating employers shall not (i) have any liability for an employee's decision to participate in or opt out of the Plan, (ii) be a fiduciary over the Program, or (iii) have any liability or responsibility related to the operation of the Program. Requires the Program to be established, and enrollment to begin, on July 1, 2023, or as soon thereafter as practicable.

7. **H.B. 2307 / S.B. 1392 – Consumer Data Protection Act.**

*Adds §§ 59.1-571 through 59.1-581 of the Code.*

Establishes a framework for controlling and processing personal data. Applies to all persons that conduct business in Virginia and either (i) control or process personal data of at least 100,000 consumers or (ii) derive over 50 percent of gross revenue from the sale of personal data and control or process personal data of at least 25,000 consumers. The CDPA does not apply to financial institutions or data subject to Title V of the federal Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.). Outlines responsibilities and privacy protection standards for data controllers and processors. Grants consumer rights to access, correct, delete, and obtain a copy of personal data and to opt out of the processing of personal data for purposes of targeted advertising, the sale of personal data, or profiling of the consumer. The Attorney General has exclusive enforcement authority. Delayed effective date of January 1, 2023.



**8. [H.B. 2312](#) / [S.B. 1406](#) – Marijuana Legalization.**

*Adds § 6.2-107.1, and adds and amends [other sections](#) of the Code.*

Eliminates criminal penalties for simple possession of up to one ounce of marijuana by persons 21 years of age or older, modifies several other criminal penalties related to marijuana, and imposes limits on dissemination of criminal history record information related to certain marijuana offenses. Creates the Virginia Cannabis Control Authority (the Authority), the Cannabis Oversight Commission, the Cannabis Public Health Advisory Council, the Cannabis Equity Reinvestment Board and Fund, and the Virginia Cannabis Equity Business Loan Program and Fund and establishes a regulatory and licensing structure for the cultivation, manufacture, wholesale, and retail sale of retail marijuana and retail marijuana products, to be administered by the Authority. Elimination of criminal penalty for simple possession effective July 1, 2021; comprehensive cannabis regulatory scheme effective 2024.

**9. [H.B. 5052](#) / [S.B. 5031](#) – Juneteenth.**

*Amends § 2.2-3300 of the Code.*

Recognizes the nineteenth day of June of each year, also known as Juneteenth, as a legal holiday in Virginia to commemorate the announcement of the abolition of slavery in Texas, the last of the former Confederate States of America to abolish slavery, and to recognize the significant roles and many contributions of African Americans to the Commonwealth and the nation.