

Staying on Top of the Hill

2010 General Assembly Wrap-up

As the saying goes, *"it could have been worse."* We knew going into the 2010 General Assembly session that it would be a tough year for retailers. Facing an over \$4 billion budget shortfall, former Governor Kaine proposed, in his final budget, the following issues that directly impacted the retail industry:

- repealed the Dealer Discount for all retailers (*the small portion the retailer retains for collecting and remitting the sales tax*)
- added an accelerated sales tax payment for retailers with \$1 million or more in annual taxable sales
- placed a \$17.50 fee on all measuring devices (*scales and fuel pumps*) to fund the Weight and Measures program.

After days and weeks of negotiations the VRF lobbyists were successful in affecting the outcome on a number of these issues:

Dealer Discount

The amended language in the budget would eliminate the dealer discount only for retailers who already are required to remit payment electronically and allow smaller retailers to retain an amount equal to 40 percent of the current discount. The removal of the discount on only those who file electronically would eliminate payments to less than 2 percent of the retailers in the Commonwealth, with the remaining retailers retaining some compensation.

Retailers that have an average tax liability of \$20,000 or more monthly are required to remit payment electronically. If your tax liability is under \$20,000 monthly you retain 40% of the Dealer Discount, or stated another way, for those retailers who do not exceed an average of \$400,000 monthly in taxable sales (or \$4.8 million dollars annually in taxable sales) retain 40% of the Dealer Discount.

Weights and Measures

During budget negotiations the \$17.50 fee , for each measuring device, was removed and the program funded to its original amount of \$2.1 million from the General Fund. The weights and measures program has received its funding from the General Fund since the days of the House of Burgess as it is a consumer protection initiative.

The amendment did include language that will require those retailers with measuring devices to have each device inspected annually by a service agent that is registered with the Weights and Measures program and a report sent to the Commissioner annually.

Accelerated Sales Tax Payment

All efforts to eliminate the accelerated sales tax payment during the budget negotiations failed. This amendment would require retailers with annual taxable sales of \$1 million or more, to make a payment equal to 90 percent of the sales and use tax liability for the previous June, with the payment being made on or before the 30th day of June, if made electronically. If payment is made other than with an electronic funds transfer, such payment shall be made on or before the 25th day of June.

This movement of tax dollars from one budget year to another is considered by many as a "shell game" or "enron accounting". The VRF opposed the measure stating that it causes most of our members a

hardship to remit estimated taxes that are yet to be collected. Many retailers did not have the cash flow to make the estimated payment when this funding gimmick was last used and relied on loans to cover the estimated liability.

Non budget legislation lobbied by the VRF

Closing the Amazon Loophole SB660

This legislation was introduced by Senator Hangar at the request of the VRF. The legislation passed the Senate but meet stiff opposition in the House Finance Sub Committee 2, where it failed on a vote of 8 to 2. Delegates voting against the bill were: [Hugo, Republican, Centerville, \(Chairman\)](#), [Ware, R.L., Republican, Powhatan](#), [Byron, Republican, Lynchburg](#), [Peace, Republican, Hanover](#), [Anderson, Republican, Prince William](#), [Watts, Democrat, Fairfax](#), [Lewis, Democrat, Accomack](#) and part of [Norfolk, Kearn, Democrat, Fairfax](#). Voting against failing the bill were Delegates Garrett , Republican from Lynchburg and Armstrong, Democrat from Henry County.

The VRF will work with House of Delegate's leadership and the Governor over the summer to gain support for this legislation that will create the opportunity to level the playing field for all retailers. One message that must be understood is that the legislation does not eliminate jobs for affiliates, it merely requires those internet retailers that hire Virginia affiliates (*commissioned sales agents*) to collect the sales tax on purchases made by Virginia consumers. A second message to be understood is that this is not a new tax, it is a tax owed currently by all Virginians who make purchases over the internet that are not taxed. If a purchase is made and tax is not collected, we the tax payers are required by law to remit the tax on our annual state income tax form.

Protecting internet affiliates, (*commissioned sales agents*), over brick and mortar stores is wrong and the VRF will continue its efforts to gain passage of this legislation in the 2011 session of the General Assembly.

Felony Threshold Increase HB828 and SB123

Each year legislation is introduced that would increase the felony threshold from the current \$200 level. This year HB828 would have increased the amount to \$750. This increase would have provided the shoplifter or theft the opportunity to steal an additional \$550 before being charged with a felony. SB 123 would have increased the amount \$10. When the patron of the bill was asked why only a \$10 increase, he stated that if a larger increase was not going to pass he would do a minimal increase in order to set the precedent by passing a \$10 increase. He then would come back annually with the same increase until the goal of a \$500 felony threshold was reached. The VRF was successful in lobbying the House and Senate Courts Committee to defeat both pieces of legislation.

Gift Cards Prohibited Practices

HB181 introduced by Delegate Joe Morrissey would have prohibited the issuance of a gift card that automatically, as a result of the passage of a period of time following its purchase or activation expires, diminishes in value by the assessment of a maintenance fee or inactivity fee, or otherwise becomes unredeemable. The VRF opposed this measure on the grounds that this is a market driven issue and need not to be legislated. Most retailers that sell gift cards are moving away from the diminishing value and maintenance and inactivity fees. The bill failed.

School Calendar Changes

There were a number of bills that would have changed the post Labor Day school opening law. Some of the legislation gave the responsibility for setting the school opening date to the School Board; other

legislation required schools to open after Labor Day only if Labor Day was later than September 5th. All legislation was opposed by the VRF. It is felt that if school open prior to Labor Day the retailer will lose a portion of its workforce and not as many families will travel over the Labor Day weekend, causing a loss of business and the Commonwealth losing tax revenue needed to fund schools, public safety and other core government obligations.

Home Access Standards

HB794 would have required the owner or operator of a commercial establishment that provides a service requiring its employees to regularly enter the interior area of the customer's residence to conduct a criminal background check on these employees. Effective September 1, 2009, employers are required to complete a criminal records check on prospective employees, but an employer is not prohibited from hiring an employee on the basis of the results of the criminal records check. Employers are required to keep copies of the fingerprints and records check for such employees. Employers shall provide identification badges to employees and require the employees to wear the badge when they are expected to enter customers' homes. Violations constitute a Class 3 misdemeanor. The VRF lobbied against the bill and it was stricken from the docket by the bill's patron.

County Food and Beverage Tax HB1138

This bill would have provided all counties the ability to impose a food and beverage tax without a referendum. Currently if a county wants to collect a meals tax, it must take it to a vote of its citizens. The VRF lobbied against the legislation as the bill created a disincentive for restaurants during a period of time where more and more consumers are dining at home rather than at restaurants.

Business, Professional and Occupational License Tax *(levied by localities on a company's gross receipt)*

HB57 introduced by Delegate Mark Cole was supported by the VRF. The bill would have capped the rates to the localities' current rate and would have prohibited the tax from being imposed if the locality did not impose it as of January 1, 2010. The bill passed the House and was carried over by the Senate.

HB 110 introduced by Delegate Mark Cole would allow localities to decide whether to impose the BPOL tax on a business's gross receipts or its Virginia taxable income. The VRF supported the legislation as a means to move the tax from a business's gross receipts.

Removal of Graffiti/Defacement of Property HB790

This bill would have expanded the ability of localities to charge the owners of occupied property the actual cost of defacement/graffiti removal when the locality, after notice, removes the defacement from a structure. Currently, such provisions apply to unoccupied property only. The VRF opposed the legislation. The bill would make the property owner a victim twice: once when the property was vandalized and again when the locality charged for the removal. Most localities will paint over the defacement/graffiti with a base color to get rid of the defacement/graffiti quickly, since it is well known that the best deterrent against graffiti is quick removal. This bill was carried over in County, City and Town Committee.

Privatization of ABC Stores

SB443 introduced by Senator Obenshein was referred to the Senate Finance Committee and never heard. The bill would have provided for the auction of "package store" licenses to authorize the retail sale of alcoholic beverages for off-premises consumption. The bill also requires the ABC Board to sell or

transfer all interest in real property utilized in the wholesale and retail sale of alcoholic beverages. The bill requires the ABC Board to set a fixed number of licenses for all localities, which shall be at a minimum one license for each locality of the Commonwealth and shall not exceed one license per 10,000 residents of the locality. The initial issuance of licenses by the Board would be through regional auctions beginning July 1, 2011, which may also be conducted through the Department's publicly accessible website. The annual state license tax on package store licenses would be the initial purchase price at auction plus an annual inflation adjustment based on the Consumer Price Index. The tax levied on spirits sold in package stores would be 25 percent of the price charged.

The VRF supports privatization if it provides for open competition throughout the Commonwealth, is a result of a formal study, is open to the public for input and is approved through the legislative process and has proper regulator controls. This bill meets some, but not all, of the VRF requirements to garner its support.