

**REVISION OF TITLES 34, 35, 36, 42 AND 43**

**REPORT OF THE  
VIRGINIA CODE COMMISSION  
TO THE GOVERNOR**

**And**

**THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 10**

**COMMONWEALTH OF VIRGINIA  
Department of Purchases and Supply  
Richmond  
1969**



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REVISION OF TITLES 34, 35, 36, 42 AND 43  
OF THE CODE OF VIRGINIA

REPORT OF  
THE VIRGINIA CODE COMMISSION  
TO  
THE GOVERNOR AND THE GENERAL ASSEMBLY  
OF VIRGINIA

To:

HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

Richmond, Virginia, October 1, 1970

The General Assembly at its Regular Session of 1968 directed the Virginia Code Commission, by Chapter 679 of the Acts of that Session, to revise certain titles of the Code of Virginia, including Titles 34, 35, 36, 42 and 43 relating, respectively, to "Homestead and Other Exemptions", "Hotels, Restaurants and Camps", "Housing", "Libraries" and "Mechanics and Certain Other Liens".

Extracts from Chapter 679 follow:

"§ 1. The Code of Virginia shall be gradually revised by revising one or more titles at a time. In revising each title, all other sections of the Code relating to the same subject matter shall be revised to the extent necessary. Experts shall be employed by the Virginia Code Commission to assist in the project. The Commission may also accept the services of qualified volunteers who are willing to serve without pay. Tentative drafts of proposed revisions should be printed and circulated among interested persons and their comments solicited.

"§ 2. The Commission shall undertake the revision of Titles 27, 33, 34, 35, 36, 40, 41, 42, 43 and 53 of the Code of Virginia and submit to the Governor and the General Assembly on or before October one, nineteen hundred sixty-nine, a report of its recommendations, together with suggestive legislation necessary to carry such recommendations into effect. No substantive changes shall be incorporated in such revisions, however, the Commission may suggest substantive change in each title being revised and submit separately legislation purposed to carry out each such recommendation."

Hugh Reid Thompson, Jr., Esquire, of the Richmond City Bar, was retained as the Commission's general counsel for these undertakings.

The Virginia Code Commission examined the provisions of these Titles in detail and consulted officials of the State agencies interested in and affected by these Titles. The Commission met with Counsel on several occasions, and discussed in detail changes recommended by members of the Commission, by Counsel and by such officials.

As a result of its efforts, the Commission has caused counsel to prepare drafts of revision of Titles 34, 35 and 43 in the usual form, i.e., bills suitable for introduction at the 1970 Session of the General

## Assembly of Virginia.

The drafts attached purport to reflect the Commission's careful consideration of all recommendations and suggestions either brought to its attention or resulting from its own observations, inquiries and deliberations.

The provisions of Title 34 basically are controlled by §§ 190 and 194 of the Constitution of Virginia which gives the General Assembly no powers it otherwise would not have but which do have the effect of (1) requiring statutory implementation and (2) imposing certain restrictions upon the General Assembly. Most obvious of the restrictions is the prescription of a two thousand dollar homestead exemption. That provision and others, because of their inflexibility, have been self-defeating with the passage of time. The proposed new constitution would delete §§ 190 to 194 entirely, thereby returning to the General Assembly broader powers in this field and permitting timely statutory changes to reflect economic and social change.

Although the Virginia Code Commission at this time cannot recommend a change in the provisions of § 34-4 because of the existing constitutional restriction, it strongly suggests that the homestead exemption be increased substantially if and when the proposed new constitution is adopted. The Commission also suggests that Title 34 be reviewed in its entirety at that time.

For the reasons above indicated, the Virginia Code Commission at this time recommends the amendment of three sections only of Title 34. The numbers of those sections, together with the changes recommended, follow:

- § 34-26, which was amended in part in 1956 to increase the maximum value of certain items of property eligible for inclusion under the "poor debtor's" exemption, to offset recent inflation by further increasing such maximum values;
- § 34-27, for the same purpose as for § 34-26 and also to delete the language "one yoke of oxen or", which is considered obsolete; and
- § 34-29, to conform its provisions with the requirements of the Federal Truth-In-Lending Act.

The attached bill relating to Title 35 would effect the amendment of only four sections of that Title, the Commission having determined those to be the only sections in which changes are indicated. The numbers of those sections, together with indications of the changes, follow:

- to permit counties and towns generally, in addition to cities, to prescribe by ordinance for the regulation of sanitary conditions in hotels and other "establishments";
- § 35-24, to affirm the right of appeal from denial or revocation of permits of hotels and other "establishments" to courts of record only;
- § 35-42, to affirm the right of appeal from denial or revocation of permits of restaurants to court of record only; and
- § 35-64.5, to correct an obvious inconsistency in the language of this section relating to the length of certain trailers.

The review of Titles 36 and 42 indicated to the Commission that no procedural or minor substantive changes in these titles are required at this time and that any such changes should be correlated with any changes which might be the result of studies in some depth of their substantive provisions.

The attached bill relating to Title 43 would repeal obsolete § 43-27.1 and amend §§ 43-24 and 43-31. No other changes are suggested by the Commission at this time.

§ 43-24, would be amended to increase the employee's lien of a superintendent for his wages from a maximum of twenty-five dollars per week to a maximum of seventy-five dollars per week, and

§ 43-31, would be amended to delete the obsolete and redundant language "or house of private entertainment".

### RECOMMENDATIONS

The Commission considers the accompanying drafts of revision of Titles 34, 35 and 43 substantial improvements over the present Titles 34, 35 and 43 and recommends their introduction at the 1970 Session of the General Assembly.

The Commission recommends no changes in Titles 36 and 42, both being subjects which appear to require further intensive substantive consideration rather than procedural or minor substantive review. However, it is suggested that these titles, particularly Title 42, be considered for study by the Virginia Advisory Legislative Council.

The Commission wishes to express appreciation for the valuable assistance rendered by Counsel in the preparation of this Revision, and for the cooperation of the officials of the State agencies affected by these Titles.

Respectfully submitted,

A. L. PHILPOTT, *Chairman*  
WILLIAM H. HODGES, *Vice-Chairman*  
G. M. LAPSLEY, *Secretary*  
FREDERICK T. GRAY  
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*A BILL to amend and reenact §§ 35-19, 35-24, 35-42 and 35-64.5 of the Code of Virginia, relating, respectively, to local regulations of sanitary conditions in hotels and other "establishments," to appeals from denial or revocation of permits of hotels and other "establishments", to appeals from denial or revocation of permits of restaurants, and to licenses and taxes on trailer camps and parks.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 35-19, 35-24, 35-42 and 35-64.5 of the Code of Virginia, as amended, be amended and reenacted as follows:

§ 35-19. **Municipal regulation.**—Nothing contained in this chapter shall in any way limit the power of any city, county or town to prescribe by ordinance for the regulation of sanitary conditions in establishments located therein.

§ 35-24. **Appeal from denial or revocation of permit.**—Any person

denied a permit or whose permit has been revoked for cause may appeal from the commissioner's action. *Notwithstanding the provisions of Chapter 1.1 of Title 9, \* any appeal shall be \* to the circuit court of the county or corporation court of the city in which the alleged violation occurred or by the judge thereof in vacation.*

§ 35-42. **Judicial review.**—Any person aggrieved by the refusal to grant, or revocation of, a permit, or by any rule or regulation of the Board or Commissioner shall have the right of appeal therefrom. *Notwithstanding the provisions of Chapter 1.1 of Title 9, any appeal shall be to the \* circuit court of the county or corporation court of the city wherein the restaurant affected is located.*

§ 35-64.5. Nothing in this article shall be construed as exempting any trailer park or trailer camp operator or person parking a trailer in an individual lot not in a trailer camp or park from the payment of any license or tax imposed by existing law, and the governing body of any such political subdivision is hereby authorized to impose an annual license on the operator or owner of any such trailer park or trailer camp or person parking a trailer in an individual lot not in a trailer camp or park of not less than five dollars nor more than fifty dollars per trailer lot used or intended to be used as such. Provided, however, that the annual tax upon the operator of a trailer camp which does not accept trailers exceeding twenty-six feet in length, measured at the longest point of the trailer but excluding the rear bumper and the trailer hitch, may be less than the annual tax upon the operator of a trailer camp which does accept trailers exceeding \* *twenty-six* feet in length, measured at the longest point of the trailer but excluding the rear bumper and the trailer hitch. The license so imposed by the governing body on such trailer park or trailer park operators or person parking a trailer in an individual lot not in a trailer camp or park is to be uniform in its application, and the amount thereof to be fixed by an ordinance duly adopted by said governing body. Provided, however, that if a trailer park or trailer camp is located in an incorporated town it may be licensed or taxed hereunder only by the town in which it is located.

2. It is the intention of the General Assembly that this act shall be liberally construed to effect the purposes set out herein, and if any clause, sentence, paragraph or section of this act shall ever be declared unconstitutional, it shall be deemed severable, and the remainder of this act shall continue in full force and effect.

3. This act shall become effective October 1, 1970.

*A BILL to amend and reenact §§ 34-26, 34-27 and 34-29, as severally amended, of the Code of Virginia, relating, respectively, to certain enumerated articles exempted from distress or levy, to additional articles so exempted to the householder engaged in agriculture and to wages or salaries exempted from distress, levy, garnishment or other process.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 34-26, 34-27 and 34-29, as severally amended, of the Code of Virginia be amended and reenacted as follows:

§ 34-26. **Exempt articles enumerated.**—In addition to the estate, not exceeding in value two thousand dollars, which every householder residing in this State shall be entitled to hold exempt, as provided in chapter 2 of this title, he shall also be entitled to hold exempt from levy or distress the following articles or so much or so many thereof as he may



have, to be selected by him or his agents:

(1) The family Bible.

(2) Family pictures, school books and library for the use of the family, not exceeding in all \* *two* hundred dollars in value.

(3) A lot in a burial ground.

(4) All necessary wearing apparel of the debtor and his family, all beds, bedsteads and bedding necessary for the use of such family, two dressers or two dressing tables, wardrobes, chifforobes or chests of drawers or a dresser and a dressing table; carpets, rugs, linoleum or other floor covering not exceeding one hundred *fifty* dollars in value; and all stoves and appendages put up and kept for the use of the family not exceeding three.

(5) All cats, dogs, birds, squirrels, rabbits and other pets not kept or raised for sale; one cow and her calf until one year old, one horse, six chairs, six plates, one table, twelve knives, twelve forks, two dozen spoons, twelve dishes, or if the family consists of more than twelve, then a plate, knife, fork and two spoons, and a dish for each member thereof; two basins, one pot, one oven, six pieces of wooden or earthenware; one dining room table, one buffet, china press, one icebox or refrigerator of any construction, provided the value thereof is not more than \* *two* hundred \* dollars, one washing machine, one loom and its appurtenances, one kitchen safe or one kitchen cabinet or press, one spinning wheel, one pair of cards, one axe and provisions other than those hereinafter set out of the value of \* *fifty* dollars; two hoes; fifty bushels of shelled corn, or, in lieu thereof, twenty-five bushels of rye or buckwheat; five bushels of wheat, or one barrel of flour; twenty bushels of potatoes, two hundred pounds of bacon or pork, three hogs, fowl not exceeding in value \* *twenty-five* dollars, all canned goods, canned fruits, preserved fruits or home-prepared food put up and prepared for use and consumption of the family, \* *twenty-five* dollars in value of forage or hay, one cooking stove and utensils for cooking therewith, one sewing machine, and in case of a mechanic, the tools and utensils of his trade, not exceeding \* *three* hundred dollars in value and in case of an oysterman or fisherman his boat and tackle, not exceeding \* *seven* hundred *fifty* dollars in value; if the boat and tackle exceed \* *seven* hundred *fifty* dollars in value the same shall be sold, and out of the proceeds the oysterman or fisherman shall first receive \* *seven* hundred *fifty* dollars in lieu of such boat and tackle.

§ 34-27. If the householder be at the time actually engaged in the business of agriculture, there shall also be exempt from such levy or distress, while he is so engaged, to be selected by him or his agent, the following articles, or so many thereof as he may have, to-wit: \* a pair of horses or mules \* unless he selects or has selected a horse or mule under the preceding section, in which case he shall be entitled to select under this section only one, with the necessary gearing, one wagon or cart, one tractor, not exceeding in value \* *one thousand* dollars, two plows, one drag, one harvest cradle, one pitchfork, one rake, two iron wedges and fertilizer and fertilizer material not exceeding in value four hundred dollars.

§ 34-29. \* \* \* (a) *Except as provided in subsection (b), the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed the lesser of the following amounts:*

(1) 25 per centum of his disposable earnings for that week, or  
(2) the amount by which his disposable earnings for that week exceed \$48.00.

(b) The restrictions of subsection (a) do not apply in the case of

(1) any order of any court for the support of any person.

(2) any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act.

(3) any debt due for any State or federal tax.

(c) No court of the State may make, execute, or enforce any order or process in violation of this section.

(d) For the purposes of this section

(1) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(2) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld, and

(3) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

(e) Every assignment, sale, transfer, pledge or mortgage of the wages or salary of an \* individual which is \* exempted by this section, to the extent of the exemption provided by this section, shall be void and unenforceable by any process of law.

2. It is the intention of the General Assembly that this act shall be liberally construed to effect the purposes set out herein, and if any clause, sentence, paragraph or section of this act shall ever be declared unconstitutional, it shall be deemed severable, and the remainder of this act shall continue in full force and effect.

3. This act shall become effective October 1, 1970.

*A BILL to amend and reenact §§ 43-24 and 43-31, of the Code of Virginia, relating, respectively, to certain liens of employees, suppliers and others and to liens of innkeepers, and to repeal § 43-27.1 of the Code of Virginia relating to the destruction of certain crop lien agreements and books.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 43-24 and 43-31 of the Code of Virginia be amended and reenacted as follows:

§ 43-24. All conductors, brakemen, engine drivers, firemen, captains, stewards, pilots, clerks, depot or office agents, storekeepers, mechanics, traveling representatives or laborers, and all persons furnishing railroad iron, engines, cars, fuel and all other supplies necessary to the operation of any railway, canal or other transportation company, and all clerks, mechanics, traveling representatives, foremen, and laborers, and superintendents to the extent of not more than \* seventy-five dollars per week, who furnish their services or labor to any one or more individuals trading under a real or fictitious name, or names, or to

any partnership or other unincorporated body of persons, engaged in mining or manufacturing, or to any mining or manufacturing company, whether such railway, canal or other transportation or mining or manufacturing company be chartered under or by the laws of this State, or be chartered elsewhere and be doing business within the limits of this State, shall have a prior lien on the franchises, gross earnings and on all the real and personal property of such individual, partnership, unincorporated association or company which is used in operating the same, to the extent of the moneys due them by the individual, partnership, unincorporated association or company for such wages or supplies, which lien shall be superior to, and have priority over, any amount due by such individual, partnership, unincorporated association or company for rents, or royalties.

No mortgage, deed of trust, sale, hypothecation or conveyance executed since the first day of May, eighteen hundred and eighty-eight, shall defeat or take precedence over such lien. The lien secured by this section to parties furnishing supplies, shall be subordinate to that allowed to clerks, mechanics, foremen, superintendents, and laborers for services furnished as aforesaid.

If any person entitled to a lien as well under § 43-3 as under this section, shall perfect his lien given by either section, he shall not be entitled to the benefit of the other.

No right to or remedy upon a lien which has already accrued to any person shall be extended, abridged, or otherwise affected hereby.

§ 43-31. Every innkeeper and the keeper of a boardinghouse \* shall have a lien upon, and may retain possession of, the baggage and other property of his guest or boarder brought upon his premises, and also upon the property of the employer of such guest or boarder, controlled and brought upon the premises by such guest or boarder in the course of his employment, for the proper charges due from such guest for his board and lodging.

2. That § 43-27.1 of the Code of Virginia, as amended, is repealed.

3. It is the intention of the General Assembly that this act shall be liberally construed to effect the purposes set out herein, and if any clause, sentence, paragraph or section of this act shall ever be declared unconstitutional, it shall be deemed severable, and the remainder of this act shall continue in full force and effect.

4. This act shall become effective October 1, 1970.

