2026 Report on The Effect and Implication of Abolishing the Common-Law Crime of Suicide on Virginia Insurance Law

Submitted to the Chairs of the House and Senate Committees for Courts of Justice pursuant to Chapter 785 of the 2026 Acts of Assembly

State Corporation Commission
Bureau Of Insurance

November 1, 2026

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
COMMISSIONERS
JEHMAL T. HUDSON • SAMUEL T. TOWELL • KELSEY A. BAGOT

November 1, 2026

VIA ELECTRONIC MAIL

The Honorable Scott A. Surovell
Chair, Senate Committee on Courts of Justice

The Honorable Patrick A. Hope
Chair, House Committee on Courts of Justice

Dear Senator Surovell and Delegate Hope:

Pursuant to Chapter 785 of the 2026 Acts of Assembly and on behalf of the State Corporation Commission, the Bureau of Insurance submits this report on the effect and implication of abolishing the common-law crime of suicide on Virginia insurance law.

Respectfully submitted,

Scott A. White
Commissioner of Insurance

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Executive Summary

On April 13, 2026, the Governor signed House Bill 43 into law as Chapter 785 of the 2026 Acts of Assembly. Codified at § 18.2-16.1 of the Code of Virginia (Code), the new law abolishes the common-law crime of suicide in Virginia, effective July 1, 2027. Virginia currently recognizes suicide as a common-law crime but prescribes no punishment for it. No federal law criminalizes suicide, and most states that once criminalized it no longer do.

The law further directs the Bureau of Insurance (Bureau) within the State Corporation Commission to "review the effect and implication of abolishing the common-law crime of suicide on insurance throughout the Commonwealth" and submit its findings and any recommendations by November 1, 2026, to the chairs of the House and Senate Committees on Courts of Justice.

After completing its review, the Bureau finds that abolishing the common-law crime of suicide should not change how Virginia's life insurance, credit life insurance, or workers' compensation laws treat suicide, because these laws do not depend on whether suicide is a crime. It will, however, remove the "illegal act" defense that defendants in some wrongful death actions now raise when the decedent was of sound mind. The Bureau anticipates that would have a negligible impact on liability insurance rates because other defenses and immunities remain available.

1. Introduction

The Governor signed House Bill 43, enacted during the 2026 Session of the Virginia General Assembly, into law on April 13, 2026. It adds § 18.2-16.1 to the Code, abolishing the common-law crime of suicide, effective July 1, 2027. The bill further directs the Bureau to "review the effect and implication of abolishing the common-law crime of suicide on insurance throughout the Commonwealth" and submit its findings and any recommendations by November 1, 2026, to the chairs of the House and Senate Committees for Courts of Justice.

Virginia is considered a common-law state.[1]

In addition, § 1-201 of the Code further states that:

> The right and benefit of all writs, remedial and judicial, given by any statute or act of Parliament, made in aid of the common law prior to the fourth year of the reign of James the First, of a general nature, not local to England, shall still be saved, insofar as the same are consistent with the Bill of Rights and Constitution of this Commonwealth and the Acts of Assembly.

This section saves only those English statutes in aid of the common law that were enacted before the fourth year of the reign of James I, roughly the time of the Jamestown settlement in 1607. English statutes enacted after that date are

not part of Virginia law unless the General Assembly has adopted them.

2. Suicide as a Common-Law Crime in Virginia

Under English common law, suicide was a felony – a form of felonious homicide, the killing of a person without justification or excuse. Unless a person was found to be insane – a lawful excuse – suicide was punishable by the "escheat of lands and forfeiture of goods."[2] Virginia inherited that rule. To constitute suicide at common law in Virginia, the person "must be of years of discretion and of sound mind."[3] However, Virginia no longer imposes the forfeiture of property for suicide. Section 55.1-103 of the Code provides that suicide does not cause "forfeiture of estate." Thus, as the Supreme Court of Virginia stated in *Wackwitz v. Roy*,[4] "although the General Assembly has rescinded the punishment for suicide, it has not decriminalized the act." Because the crime carries no punishment, it matters today mainly in civil cases, where courts ask whether the decedent was of sound mind. A person of unsound mind cannot commit the crime of suicide.

3. The Crime of Suicide in Other States

While no state punishes suicide, most states have either never had or have now eliminated the common-law crime of suicide. For instance, Alaska relies on its criminal code rather than English common law to define crimes, and suicide is not among them. Since enactment of its Penal Code of 1872, California has not considered suicide a crime and Texas rejected the common-law status in its 1876 Texas Constitution. Colorado replaced its common-law crime by statute in 1961. North Carolina abolished its common-law crime of suicide by statute in 1973, and Maryland did the same in 2019. Effective July 1, 2027, Virginia will be one of the last states to have abolished the common-law crime of suicide.

4. Suicide and Virginia Insurance Law

Suicide intersects with Virginia insurance law in several areas: life insurance, liability insurance, and workers compensation insurance.

With respect to life insurance, three statutory provisions are relevant: incontestability, a limited contractual suicide exclusion, and a bar on using suicide as a defense to a claim. Pursuant to § 38.2-3107 of the Code, a life insurance policy is not contestable after it has been in force for two years during the insured's lifetime, except for nonpayment of premiums. Within that first two years, however, subsection B of § 38.2-3106 of the Code permits a life insurance policy to include an express provision limiting the insurer's liability if the insured dies by his or her own act, whether sane or insane, within two years of the date of the policy. In that event, the insurer is obligated to return or pay, at the least, the amount of the premium paid for the policy. This section of Code protects an insurer from adverse selection in the event of suicide. The policy is considered void, and the insurer is obligated to return the amount of premium paid.

Further, under subsection A of § 38.2-3106 of the Code, the fact that an insured committed suicide "shall not be a defense in any action, motion or other proceeding on a life insurance policy that (i) was issued to any person residing in this Commonwealth at the time of issuance, or (ii) is otherwise subject to the laws of this Commonwealth, to recover for the death of that person." Both subsections A and B of § 38.2-3106 of the Code are contractual or statutory and do not depend on whether suicide is a crime, so abolishing the crime does not change them.

Credit life insurance, which pays off a borrower's debt if the borrower dies, is governed separately by Chapter 37.1 of Title 38.2 of the Code. Section 38.2-3726 of the Code sets the premium rates deemed reasonable for credit life policies that contain no exclusions other than suicide within six months of the incurred indebtedness. As with life insurance, any suicide limitation is a term of the contract and does not depend on whether suicide is a crime, so abolishing the crime will not change how these policies operate.

Suicide is of relevance to liability insurance, such as for malpractice. Generally, a plaintiff cannot recover for an injury received as the result of their own voluntary involvement in an illegal act.[5] When evaluating whether suicide would be an illegal act for these purposes, Virginia courts have looked at whether the decedent was of sound mind at the time of the act. When a defendant raises an illegality defense in this context, the burden is on the plaintiff to establish that the decedent was of unsound mind.[6] If the plaintiff sufficiently alleges that the decedent was of unsound mind when the suicide occurred, the decedent would not be guilty of the common-law crime of suicide, and recovery would not be barred *per se*. If suicide is no longer a common-law crime, this bar to recovery would no longer be available as a defense, and liability claims would instead turn on the traditional elements—duty, breach, causation, and damages—and any remaining defenses or immunities. These defenses include the absence of a duty to prevent the suicide, which generally only arises from a special relationship such as custody; lack of proximate cause; and, for public bodies and officials, sovereign immunity.

This could result in increased litigation, which could lead to a negligible increase in costs and liability insurance rates. Any increased exposure for medical professional liability insurers is limited by the statutory cap on recovery in medical malpractice actions under § 8.01-581.15 of the Code. The Bureau could not find data from other states that had decriminalized suicide showing that liability insurance rates increased meaningfully as a result.

Finally, in the area of workers' compensation insurance, Virginia courts have already dealt with suicide in a manner that is not affected by abolishing the common-law crime. Subdivision A 1 of § 65.2-306 of the Code prohibits compensation for an employee or his dependents if injury or death is caused by the employee's "willful misconduct or intentional self-inflicted injury." While it may appear the suicide would run afoul of this

prohibition, under Virginia's chain-of-causation rule, suicide may be compensable where the work-related injury produces mental derangement that causes the suicide, provided the required direct causal link is established.[7] Ultimately, whether or not the direct causal link has been established is determined by the fact-finder. Under these circumstances, suicide is not independent of the original work-related injury and is not willful or intentional within the meaning of § 65.2-306 of the Code. Because that result rests on causation rather than on whether or not suicide is a crime, the Bureau does not expect decriminalization to change it.

5. Conclusion

Abolishing the common-law crime of suicide will not change how Virginia's life insurance, credit life insurance, or workers' compensation laws treat suicide, because those laws do not depend on whether suicide is a crime. In liability actions, abolition will remove the illegality defense that applies when the decedent was of sound of mind, so more claims may be decided on duty, causation, and any applicable immunity. The Bureau anticipates only a negligible effect on liability insurance rates because those defenses remain available and recovery in medical malpractice actions remain capped by statute.

Endnotes

[1] Section 1-200 of the Code establishes that "(t)he common law of England, insofar as it is not repugnant to the principles of the Bill of Rights and Constitution of this Commonwealth, shall continue in full force within the same, and be the rule of decision, except as altered by the General Assembly.
[2] Columbia Law Review, Vol.3, No.6 (June,1903), "Is Suicide Murder," p. 379.
[3] Plunkett v. Supreme Conclave, Improved Order of Heptasophs, 55 S.E. 9, 10 (Va. 1906).
[4] Wackwitz v. Roy, 418 S.E.2d 861, 864 (Va. 1992).
[5] Wackwitz v. Roy, 418 S.E.2d at 864.
[6] Wackwitz v. Roy, 418 S.E.2d at 865.
[7] *See, e.g.,* Food Distributors v. Estate of Ball, 485 S.E.2d 155, 159–161 (Va. Ct. App. 1997). Paul Johnson Plastering v. Johnson, 576 S.E.2d 447, 452 (Va. 2003). Farmington Country Club, Inc. v. Marshall, 622 S.E.2d 233, 237–238 (Va. Ct. App. 2005).