Virginia Federation of Chapters (VFC)
2016 State Legislative Plan
"Talking Points"

October 2015

National Active & Retired Federal Employees Association (NARFE)

Enhanced Protection of Incapacitated Adults

I. Intent/Goal

Our proposal would 1) expand the definition of "incapacitated adult" from **mentally-incapacitated adults** to adults whose incapacity might be a **physical disability** or **situational** due to **social isolation.**

II. Summary of the Problem

Financial abuse/exploitation of vulnerable persons (especially senior citizens) is becoming more widespread as Americans increasingly live alone. Current legislation applies only to situations involving the exploitation of a ***mentally***-incapacitated adult. As such, this legislation does not address what might well be the more common situation, whereby someone in full command of his/her mental faculties is nevertheless vulnerable to exploitation/intimidation by dint of a physical disability and/or social isolation. This latter situation might well confront many NARFE members, either now or in the near future.

III. Political or Legal Arguments against the Issue & Suggested Counterarguments

According to the consultant & expert on elderly exploitation, Mr. William Lightfoot, who addressed our State Legislative Committee in Richmond on 6/11/13, a significant sticking point in the debate over new legislation, such as our proposal, is inclusion of the notion of "undue influence." The concern that surfaced in the Virginia House of Delegates was that this term is not found in criminal law (and therefore, plays into the fears of overly-broad prosecutorial discretion). Yet, as Mr. Lightfoot pointed out, this term does in fact figure in Virginia civil law. An example would be in the context of "Wills, Trusts, and Estates" - the idea being that a will or trust signed by someone under duress or undue influence of another is not valid. The fact that courts have been able to discern undue influence in this context suggests that they would be able to do so in the realm of financial exploitation as well.

(Excerpted/abridged from the 2013 issue paper by Edward Weiler, Legislative Chair, Arlington Chapter 7, Area X, cantilever55@yahoo.com)

Income Tax Subtraction for Retiree Health Insurance Premiums

I. Intent/Goal

Our proposal would permit Virginia retirees (both federal and non-federal) to subtract their health insurance premiums from pre-tax income, the same privilege as is afforded to all currently working citizens of Virginia.

II. Summary of the Problem

Currently, for any employee with a company or agency health plan, the amount paid by the employee for health insurance is considered pre-tax income and is deducted from the individual's W-2 income calculation. Retirees (Federal and non-Federal) are not treated the same; they must pay taxes on their entire annuity, including payments for health insurance.

In 2013, HB 2167 was signed into law. It provides that individuals over 65 may deduct premiums paid for medical insurance. To qualify, the person must make at least $20,000 (earned income) but not more than $30,000 (federal adjusted gross income). However, most retirees will not fit into this narrow window either because they do not work, and therefore do not have earned income, or because they earn more than $30,000 (counting work and annuities).

III. Political or Legal Arguments against the Issue & Suggested Counterarguments

With approximately one-eighth of the Virginia population retired (the latest Census reports show that 12.5 percent of the current population is 65 or older), allowing this subtraction from income tax would significantly impact Virginia tax revenues.

A counter argument to the tax revenue concern relates to the heavy burden the current tax law places on senior citizens. According to the 2010 Consumer Expenditure Survey, the largest expense for seniors (after housing) is medical care. These costs are rising, and the Affordable Care Act will not prevent them from continuing to rise. Seniors, both federal and non-federal, most of whom are on fixed incomes, will increasingly need to offset those costs; allowing retirees to subtract their premiums is a small measure toward that offset. Stated differently, current tax law allows everyone to subtract health premium expenses except the group that pays the most for it and that is most affected by it.

Virginia income tax forms are based on the Federal form, but provide additions and subtractions to compensate for Virginia law. The current marginal tax rate (i.e., the highest rate) is 5.75 percent. Assuming health insurance premium payments of $400/month for a retired couple, the annual savings of this proposal would be $276 for a married couple; about two-thirds of that for a single person. [$400/mo x 12 = $4800/yr x 5.75% tax rate = $276] The argument in favor of this legislation is "equality." Current law is biased against one economic group – retirees.

(Excerpted/abridged from the 2013 issue paper by James Blubaugh, Legislative Chair/Page Valley Chapter 1793, Area VII, jim@jimblubaugh.com)

Nonpartisan Redistricting Reform

I. Intent/Goal

Our proposal would amend the Virginia Constitution, such that the function of redistricting for Congressional and General Assembly seats following the Federal decennial census is performed on a strict nonpartisan basis, such as by a nonpartisan commission.

II. Summary of the Problem

Currently, *Article II, Section 6* of the Virginia Constitution mandates the General Assembly to effect the decennial redistricting for electoral districts, with little guidance beyond a general statement that every electoral district, "...shall be composed of contiguous and compact territory and shall be constituted as to give, as nearly as is practicable, representation in proportion to the population of the district." As is widely recognized, however, when left to their own devices, both bodies of the General Assembly create districts that are often only tangentially "contiguous," and violate any commonsense notion of territorial compactness. In short, our legislators are able to use the current process for partisan and/or incumbent advantage. The ensuing result has been, and continues to be, political gridlock, since this "safe-seat" process removes the need for legislative compromise.

Numerous bills calling for a bipartisan redistricting commission have been introduced in both the House and the Senate over the past several years. None of these bills has passed committee in the House, although companion bills have passed the Senate.

III. Political or Legal Arguments against the Issue & Suggested Counterarguments

Some political observers believe that this type of change will *never* happen. Granted, this type of legislation has failed repeatedly in Virginia's House of Delegates. But it is also the case that at least 20 states have established redistricting commissions over the past decade, and the US Supreme Court recently upheld the independent commission approved by a majority of Arizona citizens through public referendum. There are a number of possible options for rendering Virginia's redistricting process more rational and nonpartisan. While it is not our intent to be too prescriptive in proposing this legislation, we can draw upon one prominent example that's widely viewed as a relative success story -- the "Iowa Model." In Iowa, a non-partisan, independent agency has drawn electoral districts solely on the basis of population considerations since 1980. Iowa's system has resulted in some of the nation's most competitive political races. Perhaps the best way to sell this issue to reluctant legislators is to make the "business" case for it - *i.e.,* that growing, innovative companies prefer to locate in states where government is focused on developing the local economy, rather than on perpetuating "safe seats" for incumbent politicians.

Exerting pressure on the situation is the fact that the courts have upheld the ruling that Virginia's 3rd Congressional District has been illegally gerrymandered and that it and other districts affected must be redrawn. Since the legislature's revised redistricting map has now been rejected, a federal court has taken over the responsibility and has commissioned a professional expert to submit a revised plan by October 30.

(Excerpted/abridged from the 2014 issue paper by Edward Weiler, Legislative Chair, Arlington Chapter 7, Area X, cantilever55@yahoo.com)

Senior Absentee Voting

I. Intent/Goal
Our proposal would allow seniors (65 years and older) to vote by absentee ballot without having to formally designate a specific excuse (from a list of currently allowed excuses) on their absentee ballot requests. Also called "no-excuse" absentee voting.

II. Summary of the Problem
In the wake of long lines at many of Virginia's polling sites during the November 2012 elections, several legislative initiatives were introduced to enhance access to the polls, to include easing waiting lines. According to Virginia voter registrars, one of the main contributing factors to the long lines was curbside voting – taking a voting machine out to the curb so an elderly voter can cast a ballot from his/her vehicle. Adding to the problem is the fact that many seniors do not meet the official definition for a "disability" excuse to qualify for absentee voting under current Virginia law.

In early 2013, this proposed legislation received initial bipartisan sponsorship in both the Virginia Senate and the House of Delegates. The legislation was submitted as a compromise to earlier legislative proposals for early voting and broader no-excuse absentee voting. The legislation was supported by the Virginia State Board of Elections, Voter Registrars' Association of Virginia, the League of Women Voters of Virginia, and the AARP, among others. While in 2013, and again in 2014 and 2015, this proposed legislation passed the Virginia Senate, it was tabled by House of Delegates' subcommittee after almost no debate.

III. Political or Legal Arguments against the Issue & Suggested Counterarguments
The main political argument against no-excuse absentee voting for seniors (or other Virginians) appears to be that it may facilitate voter fraud.

Some legislators often cite voter fraud as a reasonable justification for tightening voter requirement laws in general. However, even highly conservative think tanks like the Heritage Foundation admit that voter fraud claims across the US are greatly exaggerated (CNN interview with Heritage's Hans von Spakovsky, 11/5/11). Only a tiny portion of claims have been substantiated, according to the non-partisan, public policy and law institute, the Brennan Center for Justice (www.brennancenter.org). Based on its recent comprehensive study, the Brennan Center notes that voter fraud "is more rare than death by lightning." Senator John Miller (D-Newport News) told the *Richmond Times Dispatch* (1/17/13) that cases of voter fraud in Virginia due to no-excuse senior absentee voting would be unlikely: "I have a hard time imagining that our parents or grandparents are trying to scam the system."

(Excerpted/abridged from the 2013 issue paper by Patricia Downs, VFC State Legislation Chair, patti10@centurylink.net)

Minimum Nursing Home Staffing Standards

I. Intent/Goal

We support nursing home reform, including efforts to ensure that long-term care facilities are adequately staffed with experienced professionals in the medical disciplines of gerontology and nursing, and that such individuals continue to receive training and are adequately compensated. In that regard, nursing homes are notoriously understaffed. It is recommended that minimum nursing facility staffing levels, including a minimum number of direct care hours per resident per day, be set.

II. Summary of the Problem

Federal law requires Medicare and Medicaid certified nursing homes to have a registered nurse (RN) director of nursing (DON); an RN on duty at least 8 hours a day, 7 days a week; and a licensed nurse (RN or LPN) on duty the rest of the time. However, the regulations do not mandate a specific staff-to-resident ratio or a minimum number of hours per resident day for resident care, and concerns about the quality of care in nursing homes have continued. Federal staffing requirements do not require facilities to meet specific staffing ratios (e.g., 1 nurse aide for every 5 residents or a minimum number of direct care hours per resident per day (e.g., 3 hours of direct care per day.)
In view of the above, the majority of U.S. states have adopted regulations requiring nursing homes to meet minimum nursing homes staffing levels, expressed as a ratio of nurses and nurse aides to residents, including a specific number direct care hours per resident.

Virginia Regulations relating to nurse staffing in nursing homes are minimal, and provide very general direction as to the minimal level of acceptable staffing. 12 VAC 5-371-210B provides only that the nursing facility shall provide qualified nurses and certified nurse aides on all shifts, seven days per week, **in sufficient number to meet the assessed nursing care needs of all residents**. Although most Virginia nursing homes are certified for Medicare or Medicaid and therefore have to meet the minimum Federal Medicare and Medicaid requirement of having an RN on duty at least 8 hours a day, 7 hours per week, Virginia nursing homes that are not certified for Medicare or Medicaid do not have to even meet that minimal requirement.

Legislation on the issue of nursing home staffing has been introduced during a number of Virginia General Assembly Sessions. SB 672, filed in 2004 by John S. Edwards, 21st District, would have required staffing guidelines for nursing homes and certified nursing facilities, including staffing ratio goals taking into consideration the number of beds in a facility and average occupancy rates. It was reported from the Committee on Education and Heath, by a vote of 15-0, but was left in the Finance Committee. A bill introduced in 2005 by John S Edwards, (SB 715), would have required nursing homes and certified nursing facilities to establish a minimum of three and one-half hours of direct care services per resident per 24-hour period. It passed the Senate by a vote of 40-Y to 0-N, but the House Committee on Health, Welfare and Institutions voted 22-0 to table the bill.
SB 207, introduced in 2006 by John S. Edwards, would also have required three and one-half hours of direct care services per resident per 24-hour period. It was left in Finance. HB 568, introduced in 2014 by Vivian E. Watts, 39th District, would have required nursing homes to require a minimum of specific direct care services to each resident per 24-hour period. It was left in the House Health, Welfare and Institutions Committee. HB 1396, introduced in 2015 by James A. “Jay” Leftwish, 78th District Republican, would have directed the State Board of Health and State Board of Social

Services to set staffing standards for nursing homes and assisted living facilities which include staff-to-patient ratios sufficient to protect the health and safety of each resident. It was also left in the Health, Welfare and Institutions Committee.

III. Political or Legal Arguments against the Issue & Suggested Counterarguments

Del Watts' website describes the problem: "Virginia's lack of standards is directly related to the fact that reimbursement rates for Medicaid patients in nursing homes run $500 below actual monthly costs on average. Nursing homes who do have adequate staffing do so by charging private pay patients significantly more. I see this as a hidden tax to make-up for what Virginia's low Medicaid rates don't cover. It would cost the state $24.5 million (matched by another $24.5 million in federal Medicaid funds) to require that patients in every nursing home throughout Virginia have at least 3.5 hours of direct care services per 24 hours."

On balance, however, studies have shown that more staff leads to better care and thus, increased potential for savings in healthier patients. In addition, this important quality-of-life issue that many of Virginia's seniors will face needs to be addressed.

(Excerpted/abridged from 2015 issue paper by Tom Hart, Legislative Chair, Fairfax Chapter 737, thart7@cox.net .)

Indexing Income Tax Age Deduction to Inflation

I. Intent/Goal: Minimize impact of "means" testing on income tax age deduction for seniors (65+ yrs.) by indexing age deduction to inflation.

II. Summary of the Problem: When taxpayers reach age 65, they are eligible for a State income tax deduction of $12,000 if their single-filer income is less than $50,000 or joint-filer income is less than $75,000. If their income exceeds these fixed limits**,** their deduction is reduced $1 for every $1 over the limit. This "means" testing is the result of legislation passed in 2004 and after more than ten years there has been ***no adjustment for inflation.*** According to OPM data for 2012, 20.7% of Federal retirees in VA have annuities more than $50K and 3.4% exceed $75K.

How does Virginia compare with other states? Nine States have no personal income tax, 14 States exempt total amount of Federal annuities, and the remaining 27 States have some combination of age deduction, personal exemption, or means tested limits. No States have an inflation-indexed age deduction. Georgia does have a yearly increase in the fixed limits through 2015 and then no limits after that.

III. Political or Legal Arguments against the Issue: There are no legal arguments since legislation prior to 2004 had no means testing and inflation indexing is accepted practice in both State and Federal law. Main political argument is that the issue reduces tax revenue to the State Budget General Fund. Second political argument is that "rich" seniors don't need a tax deduction. However, we support an inflation-indexed age deduction for seniors that would help alleviate the long-term cost of living increases in food, health care, and energy.

(Abstracted/abridged from original 2014 issue paper by Dick Murphy, former State Legislation Chair, Chapter 178, Area VII.)