

# 2021 Virginia Legislative Priorities and Issues

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Provided to the  
Virginia General Assembly



**VAGEMSA**

Virginia Association of  
Governmental EMS  
Administrators



**Virginia Fire Service Council**



Members of the Virginia General Assembly:

The process of gaining consensus on legislative priorities can be a daunting task that requires significant collaboration and, often times, compromise by all entities/stakeholders involved. Each year, the major fire and EMS stakeholder organizations from across the Commonwealth of Virginia meet to discuss not only their specific legislative needs, but the key issues concerning the organizations as a whole. It is the consensus of the eleven major Virginia fire and EMS stakeholder organizations that legislative items contained in this booklet are our collective priorities for 2021. Our organizations are as follows:

Virginia Fire Chiefs Association, Virginia Professional Firefighters, Virginia State Firefighters Association, Virginia Association of Governmental EMS Administrators, Virginia Association of Volunteer Rescue Squads, Virginia Fire Prevention Association, VA Chapter—International Association of Arson Investigators, Virginia Association of Hazardous Materials Response Specialists, Virginia Ambulance Association, Virginia Regional EMS Councils and the Virginia Fire Service Council

As the presidents/chairmen of the above statewide fire and EMS stakeholder organizations, we request that you consider and ultimately approve these major legislative initiatives, which would entail a major impact on fire and EMS in the Commonwealth of Virginia. Further, it is our desire to inform you of other critical issues that are affecting the fire and EMS community and that may require future legislation.

We thank you for your review and consideration of these important matters.

Sincerely,  
(Fire and EMS Stakeholders)

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## **Establishing Workers' Compensation Benefits for COVID-19**

Firefighters and emergency medical services (EMS) providers are playing critical roles in Virginia's coronavirus (COVID-19) response. While many in our Commonwealth are being asked to stay at home, firefighters and EMS providers continue to provide frontline healthcare to millions of Virginia's residents and visitors. Despite working in uncontrolled environments, the dedication and professionalism of Virginia's firefighters and EMS providers are on display countless times each day.

It is imperative that these valiant individuals are cared for, should they be exposed to this virus and require quarantine or even worse hospitalization. However, Virginia's Workers' Compensation Act falls short of providing any assurances that workers will be protected if they are infected with COVID-19. Therefore, Virginia's fire and EMS stakeholders unanimously support establishing a presumption for COVID-19 under the Workers' Compensation Act to ensure our first responders and their families are protected.

### **Background**

On March 12, Governor Ralph Northam declared a state emergency in the Commonwealth of Virginia to address the spread of the coronavirus (COVID-19). This virus is a highly communicable disease and poses a significant public health risk. Despite the daily health threat, Virginia's firefighters and EMS providers have battled on the frontlines to save lives since March 2020. Our fire and rescue departments have implemented the best safety protocols and strategies to reduce their exposure. However, nobody is immune to COVID-19 and the number of COVID-19 cases among those in uniform continues to rise.

Presently, the Virginia Workers' Compensation Act makes it difficult and nearly impossible for a first responder to be awarded benefits for a coronavirus-related death or disability. The *Code of Virginia* (§ 65.2-400) defines an occupational disease as "a disease arising out of and in the course of employment, but not an ordinary disease of life to which the general public is exposed outside of the employment." It is the second part of that definition that is most problematic for obtaining benefits for COVID-19. We have been witnessing for months the reality that the general public can be exposed anywhere.

Due to the nature of the coronavirus, the clear and convincing evidentiary standard in the *Code of Virginia* is unattainable. Presently, all Virginia's firefighters that have applied for COVID-19 benefits have had their claims denied by their localities for a failure to satisfy the current evidentiary standard. A trip to the grocery store by an employee while off duty casts doubt into the initial cause of the virus. Some employers are even going as far as disciplining an employee for a positive COVID-19 test, citing failure to follow safety protocols.

The 2002 General Assembly established a presumption for numerous infectious diseases (§ 65.2-402.1) for Virginia's firefighters, EMS providers and police officers. Nobody could have predicted a need to expand the infectious disease statute, but that time is now. We support establishing a new presumption for the exposure to coronavirus. Our first responders have answered Virginia's call to control the COVID-19. The General Assembly should answer their call and provide benefits for the death and disability related to a COVID-19 exposure.

**Establishment of a Requirement in the Code of Virginia for Health Information Data Sharing During State of Emergency or Public Health Emergency**

It is requested that a new section of the Code of Virginia be established as § **32.1-116.4** and read as follows:

§ **32.1-116.4**. Data Sharing During State of Emergency or Public Health Emergency; Confidentiality.

A. In order to collect data on the incidence, severity, and cause of a state of emergency or public health emergency; integrate the information available from other state agencies regarding the emergency; improve the delivery of pre-hospital and hospital emergency medical services, the quality of patient care, and access to medical services; and make other system improvements, state and local health departments and local government emergency medical service agencies shall share and exchange the information and data, including patient information, necessary to mitigate and respond to a state of emergency or public health emergency in order to better the welfare of individuals within the Commonwealth of Virginia.

B. The State Board of Health shall establish regulations or procedures for identifying, sharing, and exchanging the data described in subsection A. The State Board of Health shall seek recommendations from the State Health Commissioner and Emergency Medical Services Advisory Board and may consult any other entities or individuals the Board deems appropriate to aid it in the implementation of the regulations or procedures.

C. During a state of emergency or public health emergency, the Commissioner, the Department of Health and local health departments or district health departments established in accordance with Article 5 of § 32.1 shall participate in data sharing by making available to the head of the local government emergency medical service agency or his designee the data described in subsection A in the format prescribed by the State Board of Health or in any other format directed by the Commissioner, so long as it contains equivalent information and meets the informational needs identified by the Emergency Medical Services Advisory Board.

D. All licensed hospitals which render emergency medical services shall participate in the state of emergency or public health emergency data sharing by making available to the Commissioner abstracts of the records of all patients admitted to the institutions with diagnoses related to a state of emergency or public health emergency. The abstracts shall be submitted in the format prescribed by the State Department of Health and shall include the minimum data set prescribed by the State Board of Health or Commissioner. Such abstracts shall also be provided to regional emergency medical services councils upon request, for the purpose of monitoring and improving the quality of emergency medical services pursuant to § **32.1-116.4**.

E. Patient information and data submitted to or shared by the Commissioner or his designees, local or district health departments, the Emergency Medical Services Advisory Board, any committee acting on behalf of the Emergency Medical Services Advisory Board, any hospital or prehospital care provider, any regional emergency medical services council, emergency medical services agency, or other group or committee for the purpose of monitoring and improving the quality of care pursuant to § **32.1-116.4**, shall be kept confidential and may only be disclosed in

accordance with § **32.1-116.2** or by order of court, after good cause is shown requiring the disclosure of such data.

§ **32.1-116.2**. Confidential nature of information supplied; publication; liability protections.

A. The Commissioner and all other persons to whom data is submitted shall keep patient information confidential. Mechanisms for protecting patient data shall be developed and continually evaluated to ascertain their effectiveness. No publication of information, research or medical data shall be made which identifies the patients by names or addresses, except specified in subsection B *or required by* § **32.1-116.4**. The Commissioner or his designees may utilize institutional data in order to improve the quality of and appropriate access to emergency medical services and to improve the health of citizens of the Commonwealth.

B. In accordance with the State Board of Health's regulations and applicable federal law and regulations, the Commissioner may disclose information, research, or medical data that identifies patients by name or address if the Commissioner determines that such disclosure is necessary to develop and implement programs that improve the quality of patient care, improve access to medical services, or make other system improvements. The Commissioner shall only disclose such information with entities including, but not limited to, other Virginia state agencies and programs, federal agencies and programs, the National Registry of Emergency Medical Technicians, or recognized research institutions and organizations that seek to improve quality of care, improve access to medical services, or make other system improvements *or as required by* § **32.1-116.4**.

C. No individual, licensed emergency medical services agency, hospital, Regional Emergency Medical Services Council or organization advising the Commissioner shall be liable for any civil damages resulting from any act or omission preformed, as required by this article, unless such act or omission was the result of gross negligence or willful misconduct.

**Addition of Volunteer and Salaried Emergency Medical Services (EMS) Providers to the Code of Virginia § 65.2-402(B). Presumption as to Death or Disability from Hypertension or Heart Disease**

Experiencing many stresses while responding to emergency medical services calls (both emergency and non-emergency), EMS providers treat patients with the utmost of care and concern. Responding to life or death emergencies (such as cardiac arrests/events, strokes), traffic crashes (some that require extensive extrication), standbys supporting firefighting emergencies, situations involving death (from many different and often heart-wrenching circumstances), and consoling family members when necessary, EMS providers perform many lifesaving and support functions in the community—essentially “doing a little bit of everything.” EMS providers are required to maintain extensive Virginia and/or national certifications in order to operate as part of a Virginia EMS agency.

The job of EMS provider—career or volunteer—requires performance of the same type of strenuous activities as the others currently included in the presumption section. In many cases, they perform the same job with the same training when it comes to emergency medical services. Volunteers, especially those in rural areas of the Commonwealth, spend anywhere from one to four hours per call treating and transporting their patients to or from medical facilities.

Unfortunately, this section of Virginia code omitted EMS providers when it was first established in 1975. Today, both salaried and volunteer EMS providers answer just as many calls, if not more, than others listed in the section. It is now time to recognize the significant physical toll that EMS providers experience due to the critical care and life saving acts that these individuals perform each and every day.

EMS providers know that the stress of their chosen field, whether salaried or volunteer, and their service to the community affects their health and well-being. Thus, we are seeking legislation to add *salaried and volunteer emergency medical services (EMS) providers* in the hypertension or heart disease section of the Code of Virginia § 65.2-402(B).



## **In-building Communications Coverage in Virginia Building Code Through the Legislative Process of the Virginia General Assembly**

The current Virginia Construction Code does not require a building developer/owner to assure first responder portable radios will transmit and receive inside of a new building. But the “model” International Code does (from which the Virginia Code is derived) and has required such since 2009. Building construction features and materials can absorb, inhibit or block the radio frequency energy used to carry the signals inside or outside the building. Blockage or absorption of the radio frequency signal can prevent critical messages/radio transmissions among emergency responders and between their emergency dispatch center from being received and acknowledged. Depending on the incident, this loss of information can place the emergency responders in great danger, or may prevent an injured or disoriented emergency responder from communicating for assistance.

Often times, when building developers/owners are asked to provide the necessary fully functional “in-building” communications infrastructure for the purposes of ensuring responder safety and ultimately the building occupants, they do not comply and the locality has no other authority to enforce this life-critical safety need of responders. Often times, if the locality cannot achieve the voluntary compliance with such request, it may be forced to bear the additional cost (which is ultimately a cost to the overall taxpayers) or risk responder safety. It is unconscionable that the citizens/taxpayers of a jurisdiction should bear the financial burden of a private building that is being built in a locality. And is tantamount to placing responders, who willingly risk their lives to save others, in harm’s way without the most basic of abilities to call for help when in peril or for an incident commander to order an evacuation prior to firefighters becoming trapped. Therefore, the Virginia General Assembly is requested to take necessary action to ensure that the Virginia Construction code follows the requirements of the “model” code.

## **Other Informative Issues**

### **Public Safety and Agritourism**

The fire and EMS stakeholders recognize the importance of rural businesses to the economy of the Commonwealth, and the important role of public safety in ensuring the protection of patrons. In 2018, farms were 32 percent of Virginia's land area. The fire and EMS stakeholders support legislation that defines clear expectations for public safety, as it relates to assembly within agritourism buildings or structures and supports educating owners of such structures as operational components, such as those found in the Virginia Statewide Fire Prevention Code (SFPC), that should be considered when occupied by patrons. The fire and EMS stakeholders support legislation that provides for safety features in Virginia Code that promote minimum life-safety standards in portions of agritourism buildings or structures used for assembly of 50 or more persons, and for the allowance of the operational aspects (human elements, not the structural elements) of the SFPC to apply to these currently exempt structures. The goal of these minimum safety regulations would be to prevent fires from occurring, helping to assure these important businesses remain in business, and if and when a fire may occur, give patrons enough time to get out of the structure, minimizing the possibility for loss of life.

In the regular 2020 General Assembly session, House Bill 2364 was introduced, which would have amended the definition of "agritourism activity" for purposes of liability, as well as the statutory limit on the imposition of restrictions by local governments, to include service as a wedding venue for not more than 12 weddings per calendar year, each wedding involving not more than 250 guests.

The bill was strongly opposed by the Virginia Fire Prevention Association, as well as other fire service groups, but it looked very likely to pass the legislature. Bills such as this have a great potential to degrade the safety of the public.

The collective fire and EMS stakeholders respectfully request that the Virginia General Assembly not take such action that would further reduce the life safety of the public just because of a unique building/venue.

### **On-demand mobile fueling**

On-demand mobile fueling is often characterized (by its proponents) as being as safe as the typical self-service gasoline station. This characterization is based, in part, on the industry safety record regarding the on-demand mobile fueling of diesel fuel, home heating oil and other Class II and III Flammable liquids, as well as the comparatively short and sporadic duration that this service has been offered in select areas. The proponents advertise that mobile fueling is the next step for the "on-time" delivery industry and propose to expand to the delivery of gasoline (a Class I Flammable Liquid) to personally owned vehicles in a commercial and/or residential venue and the delivery of gasoline for commercial fleet refueling. Fire experts recognize that the risks posed by mobile fueling is an expensive luxury which may bring with it a high price tag because of its potential for fires and environmental costs.

Currently, there exists an allowance for refueling of private use motor vehicles on a farm or rural area, at construction sites, earth-moving projects, gravel pits and borrow pits. This exists due to the lack of occupied dwellings, people, or other sensitive infrastructure. Mobile fueling is currently not as safe as any self-service gasoline station. In some circumstances, there may be an appropriate venue for a commercial service, but there must be additional considerations made to reduce the potential hazardous environments and ignition sources. These considerations would include such things as: vapor recovery, specifically *listed* pumps and meters for the mobile gasoline fueling environment, automatic shut off, bonding, intrinsically safe equipment and electrical wiring, and code compliant fire apparatus access roads, as well as protection from radiant heat effect, and explosion protection from the truck itself (that is being fueled).

Before the fire and EMS stakeholders can reasonably consider on-demand mobile fueling as the next step for the “on-time” delivery industry and a new luxury to those who favor it, the mobile fueling industry must provide for the additional needed safety, especially as they pertain to spill prevention and mitigation at mobile sites, vapor reduction and control of ignition sources of gasoline vapors in the area being fueled. Furthermore, the technology, appropriate testing, and necessary codes to provide for all the omitted safety measures appear to be lacking in the industry. Addressing the codes before the technology and testing of the mobile fueling of gasoline in highly populated areas is an injustice. The proponents of this activity must first assure that the physical testing and listing of devices for use with the mobile application of Class I Flammable Liquids (gasoline) occurs before any consideration should be made to change current Virginia laws or codes.

### **School Safety and Barricade Devices**

Building and fire codes save lives. We don’t want to exchange one potential hazard for another. The Board of Housing and Community Development (BHCD) is poised to amend the Uniform Statewide Building Code in violation of the Americans with Disabilities Act. Changes may come soon as the proposed changes to the USBC and the Statewide Fire Prevention Code. The concerns of the fire and EMS stakeholders is the relaxation of code for the approval of emergency supplemental barricade devices that does not protect the safety of persons with disabilities.

The charge of the Code of Virginia under §27-97 is to use due regard for generally accepted standards, as recommended by nationally recognized organizations including, but not limited to, standards of the International Code Council, the National Fire Protection Association, and recognized organizations. This is also found in the COV §36-99, which informs the Uniform Statewide Building Code (USBC) and includes a barrier-free provision for the physically handicapped and aged. Currently, national organizations are considering options for inclusion into their building and fire codes. It is premature for Virginia to contemplate proposals to counter our fire and life safety codes, before these organizations have reached consensus. Codes should not be amended for the minority of structures that may not have the ability to easily exchange locking hardware and remain code complaint. It is for these select, lesser number of structures that a code modification provided by the Fire Official and the Building Official would apply to address a problem.

Doors that are lockable from the inside have and will save lives. Mass shooters have not been penetrating locked doors. We saw this in the recent event on May 31, 2019 in Virginia Beach. A supervisor was behind a locked door. Despite shooting the door, the assailant did not enter the room.

It has been documented that these barricade door devices are not legal under ADA. Door accessibility requirements are found in Title III, section 36.402-36.499. Title II, Section 35.133 addresses the only times that doors are allowed to be inoperable. Those two conditions are temporary interruptions in service or access due to maintenance or repairs. Title III has very similar language. Emergency situations—no matter how short—do not allow the doors to be out of operation.

### **Reactive or Exploding Target Enforcement**

Throughout the country, there have been numerous complaints and a few serious injuries, as a result of the improper use of reactive targets, mostly due to users combining large numbers of targets to create a single, big blast. Commercially available under several brand names, reactive or exploding targets are binary explosives that have long been used by mining companies and the blasting industry because the elements, when stored separately, are safe. They are correctly used by long-range target shooters who wish to see a puff of smoke to confirm they have stuck their target. The targets only explode when they are hit by a projectile, such as a high-velocity bullet. Currently, the Virginia Statewide Fire Prevention Code (SFPC) regulates the correct use of reactive targets. The penalty for a violation of the SFPC is a Class 1 misdemeanor, of which the offence must be committed in the officer's presence for the officer to take action under §19.2-74 of the Code of Virginia (COV), to include issuing a summons. To enforce the SFPC requires very specific advanced education and certification, which the average law-enforcement personnel do not receive and/or maintain. And it would be unwieldy to attempt to ascertain these qualifications. As such, 13VAC5-51-41, Section 104 Enforcement expanded the COV to allow for the enforcement of aerial fireworks or non-permissible 1.4G firework provisions by law-enforcement officers. In accordance with § [27-100.1](#) of the Code of Virginia, law-enforcement officers who are otherwise authorized to enforce certain provisions of this code shall not be subject to the certification requirements of Section 105.2 or 105.3.2. This allows for a wider enforcement of illegal fireworks. This same enforcement network should be utilized to enforce reactive targets.

This will require an addition to two codes:

- 13VAC5-51-41, Section 104, specifically 104.1.2 Enforcement of reactive target provisions by law-enforcement officers. In accordance with § 27-100.2 of the Code of Virginia, law-enforcement officers who are otherwise authorized to enforce certain provisions of this code shall not be subject to the certification requirements of Section 105.2 or 105.3.2.
- § 27-100.2. Seizure and destruction of certain binary explosives known as reactive targets. Any law-enforcement officer arresting any person for a violation of this chapter related to reactive targets shall seize any article of the reactive target in the possession or

under the control of the person so arrested and shall hold the same until final disposition of any criminal proceedings against such person. If a judgment of conviction be entered against such person, the court shall order destruction of such articles upon expiration of the time allowed for appeal of such judgment of conviction.

This is necessary to allow local law enforcement and Virginia State Police to enforce the use of reactive targets or exploding targets in excess of 1 pound on private property, used closer than 500 feet to a structure or a roadway, or used outside of the manufacturers intended purpose (e.g., destruction of property, vehicle, structure or animal life). It also ensures consistency with the SFPC throughout the Commonwealth.

## **Fireworks**

The fire and EMS stakeholders oppose any action by the General Assembly that would expand the sale, possession and use of consumer fireworks, without the provisions to assure compliance with related National Fire Protection Association Standards which contain minimal fire and life safety provisions for all consumer fireworks. Injuries and deaths from fireworks occur annually. According to the U.S. Consumer Product Safety Commission, there were an estimated 10,000 fireworks-related injuries treated at U.S. hospitals in 2019, an estimated 7,300 of which occurred between June 21, 2019 and July 21, 2019 and 36% occurred in children under 15 years old and nearly half were individuals younger than 20 years of age.<sup>1</sup> Approximately 5,600 of these occurred from June 22 to July 22, 2018, and nearly half were to individuals younger than 20 years of age. After Iowa allowed the sale of fireworks in 2017, firework injury patients under 18 years of age increased 26%. Injuries after Iowa's legalization were more severe, with 57% requiring surgery compared to the 20% prior to legalization.<sup>2</sup>

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<sup>1</sup> U.S. Consumer Product Safety Commission, 2019 Fireworks Annual Report.  
<https://www.cpsc.gov/s3fs-public/2019-Fireworks-Annual-Report.pdf>

<sup>2</sup> University of Iowa, Legal Consumer Fireworks in Iowa, October 2017 Report  
3 National Fire Protection Association, Fireworks Safety, June 2016 Fact Sheet.