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New Laws in Local Jurisdictions

By James Irving



A number of new laws went into effect in Virginia, Maryland and the District of Columbia as of July 1, 2015.

These include the following:

In Virginia:

- Employers are no longer permitted to require workers or job applicants to disclose their social media usernames or passwords, nor can they require employees to “friend” them on Facebook;
- Police must obtain a warrant to use drones in an investigation;
- Uber, Lyft and other ridesharing companies must conduct criminal and sex offender background checks on all drivers as well as compiling a driving history report. These companies must pay a one-time \$100,000 licensing fee and annual renew fees of \$60,000;
- Colleges must report sexual violence to law enforcement when an investigation begins and make a note on the transcripts of students who are suspended or expelled for those crimes;
- Virginia Railway Express has raised fares, with some riders paying up to 45 cents more per trip;
- Drivers can now cross the double yellow lines to pass pedestrians and cyclists, but may be ticketed for following bicycles, motorized wheelchairs or other non-cars too closely;
- Virginia will now grant civil immunity to anyone who breaks into a car to save a child as long as the person has first tried to call 911;
- Mothers may now breast-feed in public;
- Restaurants are now required to follow training standards on food allergy awareness and safety and
- Veterans may receive credit for military training courses that relate to their college coursework requirements.

In Maryland:

- Drivers will pay lower tolls on some state roads and bridges. The toll to cross the Bay Bridge has been reduced from \$6 to \$4. The

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E-Z Pass holder discount has increased from 10 percent to 25 percent for the Baltimore Harbor and Fort McHenry tunnels, the Francis Scott Key Bridge and the Thomas J. Hatem Memorial Bridge;

- The so-called “rain tax,” which was a stormwater remediation fee for property owners, has been repealed;
- The gas tax has increased from 2 percent to 3 percent, adding about 2 cents per gallon;
- Ridesharing companies like Uber will be regulated by the Maryland Public Service Commission, which will require drivers to be fingerprinted and
- The minimum wage has gone from \$8 to \$8.25. It is set to rise to \$8.75 in 2016, \$9.25 in 2017 and \$10.10 in 2018.

In the District:

- The minimum wage has risen to \$10.50 and will be increased to \$11.50 next July.

James Irving is a shareholder focusing his practice in business law. He can be reached at jirving@beankinney.com.

Now or Never: Check Your Wallet for RadioShack Gift Cards!

By Andrea Davison



Last week, RadioShack announced in court papers that it had settled a dispute over gift cards to its stores that remain unredeemed during its bankruptcy case. Pursuant to the proposed settlement, which is subject to bankruptcy court approval, gift card holders will be required to file a simple proof of claim, available online or by mail. Those holding unredeemed balances on certain purchased gift cards – that is, those which were actually purchased for cash from RadioShack, RadioShack.com or other merchants – will have gift

card balances treated as priority claims and will be paid 100% of the value of the cards. Those holding merchandise return credit, promotional or giveaway gift cards, or other cards that were not actually purchased for cash, will have general unsecured claims in the case.

The RadioShack settlement represents a compromise between the Attorney Generals of several states, arguing on behalf of consumer gift card holders, and the Debtors. At this point, it is unclear whether a group of gift card holders themselves, who have also filed a class action seeking priority treatment, will support the settlement. It is also unclear just how much of the estimated \$46 million balance in unredeemed gift cards are covered under the “priority” portion of the settlement, and how many will be considered unsecured.

Under the RadioShack settlement, a website and toll-free number will be established to provide the gift card holders access to the claim form. Still to be negotiated, however, is the procedure for notifying the gift card holders of the claims process and existence of the website. The parties are likely considering this process carefully for a reason: gift card holders are generally not “known” creditors, in that the company maintains or ever receives any information on the ultimate holders, and for this reason the notice portion of the process has been a hang up in other retail bankruptcy cases.

When Borders filed for bankruptcy back in 2011, it sought and obtained approval of a general bar date for pre-petition claims, notice of which was sent to known creditors and published in the New York Times. There was no mention of gift card claims in the notice, and no gift card holders filed claims by the general bar date. Although Borders stores did honor gift cards until the doors closed, gift cards were deemed valueless after the store closing sales ended in September 2011, pursuant to the Borders liquidating plan. Thereafter, a class of Borders gift card holders filed papers seeking authority to file late claims on the basis that they did not receive adequate notice of the claims bar date, and priority status for such claims. The Bankruptcy Court, District Court for the Southern District of New York and, most recently, the Second Circuit Court

of Appeals, have denied the class' claims, deeming them equitably moot. Although these courts have agreed that the single advertisement that Borders took out in the New York Times was enough to put holders of approximately \$210 million in unredeemed gift cards on notice of the need to file a claim, the card holders have asked the United States Supreme Court to weigh in next term.

Contrast the Borders case with Sharper Image, another recent retail bankruptcy. In that case, Sharper Image's motion to establish a general claims bar date (which expressly covered gift card holder claims) was withdrawn when it drew criticism for proposing to simply publish notice in the New York Times and Wall Street Journal, rather than attempting to reach known gift card holders. Eventually, Sharper Image gained approval to establish specific gift card claim procedures, which included publication of notices on various websites, including Facebook, and advertising in People and Sports Illustrated magazines. Gift card holders who could provide a copy of their gift card received 100% recovery on their unredeemed balances.

For now, the ultimate lesson for gift card holders may be to pay attention. If you are holding on to a gift card for a company that is faltering – for example, American Apparel, a company with publicized financial woes – you are well advised to use that gift card before a bankruptcy is even filed. Those who wait may be left holding the card.

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Latent Drunk Driving

By James Irving

In March, we analyzed the Supreme Court of Virginia's holding in *Sarafin v. Commonwealth*, wherein the drunk driving conviction of an occupant of a vehicle, passed out in his driveway with the key turned to auxiliary, was affirmed. The Court's theory

was that the statute only requires an intoxicated person to be "in actual physical control" of a vehicle on a highway to be guilty of drunk driving.

In July, the Circuit Court of Fairfax County heard a case presenting a similar defense and reached a similar result in *Commonwealth v. Lopez*. Unlike Sarafin, Lopez was on public property – the parking lot at Coastal Flats. But also unlike Sarafin, his key was not in the ignition. Instead, he had in his pocket a key fob that permitted the car to be turned on at the touch of the ignition button.

There seems to have been no real dispute that Lopez was intoxicated – his BAC was at least twice the legal limit - and no one seriously disputed that the parking lot constitutes a "public highway." The real issue was whether Lopez – who was apparently asleep in his car waiting for a friend to pick him up – was "operating" the vehicle. Under the circumstances of this case, a driver is operating the vehicle if he "drives or is in actual physical control" of the vehicle.

The undisputed facts showed that Lopez had the fob in his pocket and that some of the vehicle's interior lights were on. Judge Robert J. Smith noted that the fob must be "present" for the car's push-button ignition to operate, but significantly, the court stated that "[t]he evidence does not establish what exactly is meant by present. Certainly, though, the fob must be at least in the immediate vicinity of the car."

Perhaps the public policy implications of the Sarafin and Lopez cases should be examined. People get drunk. Should the Commonwealth encourage them to wait in their car for a ride or attempt to sleep it off rather than risk trying to drive home? The purpose of this article is not to take a position on public policy issues. It is, however, to again raise the red flag to people who may find themselves prosecuted for drunk driving without having any intention to drive. That risk is real – all you have to have to do is hold a key fob close enough to the car for the push-on ignition to work. Welcome to the world of latent drunk driving.

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