

## TALKING POINTS – HB 1048 (& SB 566)

This bill would help educate motor vehicle drivers to pass the drivers of any non-motorized vehicle (including a bicycle) with a wider margin of error and thereby reduce the number of fatalities and serious injuries to these legal and legitimate road users. In addition, this bill could improve justice for all lawful and prudent drivers of non-motorized vehicles (including bicycles) who are injured by negligent following motorists. Finally, this bill would make it illegal to harass or endanger the driver of any legal vehicle by tail-gaiting.

**This bill would amend three sections of the Code of Virginia, §§ 46.2-816, 46.2-838, and 46.2-839**

**§ 46.2-816. Following too closely.** Currently, this Code section applies only to motor vehicles following other motor vehicles, trailers, or semi-trailers. The proposed modification would extend the same standard of legal protection to the drivers of all vehicles that are permitted on the roadway, including bicycles, mopeds, and animal-drawn vehicles. The prohibition on following too closely would still only apply to **drivers of motor vehicles**, so the common (and typically safe) practice of a bicyclist drafting another bicyclist would **not** be affected.

**§ 46.2-838. Passing when overtaking a (motor) vehicle.** The proposed change would retain the current 2-foot passing distance for passing motor vehicles, but clarify that this code section applies to passing **motor** vehicles only. Otherwise, § 46.2-838 and § 46.2-839 would be redundant and/or confusing for bicycles, mopeds, and animal-drawn vehicles.

Note that § 46.2-907 (Overtaking and passing vehicles) additionally applies to riders of bicycle and mopeds. This section, which is unaffected by HB 1048 or SB 566, says that the bike or moped rider “may overtake and pass another vehicle on either the left or right side, staying in the same lane as the overtaken vehicle, or changing to a different lane, or riding off the roadway **as necessary to pass with safety.**” Also, a bike or moped rider “**may overtake and pass another vehicle only under conditions that permit the movement to be made with safety**” and shall otherwise “**comply with all rules applicable to the driver of a motor vehicle when overtaking and passing.**”

**§ 46.2-839. Passing bicycle, electric personal assistive mobility device, electric power-assisted bicycle, moped, animal, or animal-drawn vehicle.** The sole proposed change to this statute would be to increase the minimum passing distance for bicycles and mopeds from two feet to three feet.

**The current code says “pass by (at least) two feet”, but it doesn’t seem to be enough.**

**Recent Bicyclist Fatalities:** 11 cyclists were fatally struck by Motor Vehicles in 2009 in Virginia, and most of them were hit from behind. Several were high-profile incidents: Daniel Hersh in Virginia Beach, Kevin Flock in Dinwiddie County, and Dr. Joe Mirenda near Harrisonburg, all of whom were apparently hit squarely from behind.

**Claims of a “Suicide Swerve”:** Drivers involved in such crashes may state that the cyclist swerved into them as they were passing the cyclist. Drivers must consider a bicycle’s typical wobble when estimating the safe passing distance, and a three-foot swerve or wobble is less credible than a two-foot swerve or wobble.

**Extended Mirrors:** Vehicles pulling boats, horse trailers, and trailers with lawn care equipment tend to have extended mirrors on the passenger side that extend farther than the driver realizes.

**Educational Value:** Neither drivers, cyclists or law enforcement officers carry measuring devices to know exactly how closely one vehicle is passing another, but 3 feet seems to be a recognizable educational tool to give the drivers the message to give the cyclists a wider berth (whereas any collision provides the needed proof that the passing distance was inadequate). **If the changes to following too closely and passing too closely are adopted, DMV's Virginia Drivers Manual and state Drivers Test can incorporate this information.**

**Nationwide Practice: 16 States, plus the District of Columbia have already adopted 3 feet in their codes:** Arizona, Arkansas, Colorado, Connecticut, Florida, Illinois, Kentucky, Louisiana, Maine, Minnesota, New Hampshire, New Mexico, Oklahoma, Tennessee, Utah, Wisconsin, **and bills that would adopt the 3-foot minimum distance for passing bicyclists are currently pending in at least several other states. Thus, a 3-foot minimum distance for passing bicyclists will likely be the law in a majority of the U.S. states within a few years.**

**Bicycle-Friendly State Criterion:** Moreover, the League of American Bicyclists has adopted the existence of a 3-foot minimum passing law as one criterion for ranking the bicycle friendliness of the 50 states. Virginia has twice been ranked the 23<sup>rd</sup> best state, in part for lacking a 3-foot passing law. Passage of this bill would help improve Virginia's ranking in the future which will help attract more bicycling tourists to visit Virginia.

#### **Reasons for Requiring Less Passing Distance (2-feet) for Passing Motor Vehicles:**

**1) Two Feet is Adequate for Passing Motor Vehicles at Low Speeds:** Low-speed maneuvering such as in parking lots often has vehicles as close as two feet, and the driver and passenger in the motor vehicle are protected by the vehicle, so passing by two feet seems to work well for motor vehicles.

**2) Motorists Naturally Pass Other Motorists Widely at Higher Speeds:** In part because lane-splitting by motor vehicles is illegal, motor vehicle drivers tend to naturally give other motor vehicles a wide berth, particularly at higher speeds.

**3) Non-Motorized Drivers Are More Vulnerable and May Naturally Wobble to Stay Balanced:** On the other hand, the bicyclist (and similar road user) lacks occupant protection, resulting in small miscalculations or errors having catastrophic consequences for the bicyclist. Moreover, two-wheeled or single-track vehicles such as bicycles must necessarily wobble some to stay balanced, whereas four-wheeled vehicles don't wobble. The catastrophic results of a collision dictate that a greater passing distance be required when a motor vehicle passes a bicyclist.

**4) Wind Blast:** The wind blast from a large truck passing with two feet at high speed is far more problematic for a cyclist than for a motor vehicle. Furthermore, wind blasts from large passing vehicles can cause bicycles and mopeds to wobble even more than usual.

**5) Differences in Typical Speed Differentials:** Bicycles and mopeds generally pass other vehicles at relatively low speeds, whereas motor vehicles may pass non-motorized vehicles at speed differentials exceeding 45 MPH.

**6) Narrow Vehicles Are Much More Readily Passed Closely:** Because bicycles and mopeds are much narrower than 4-wheeled vehicles, they may be legally and much more readily passed without even changing lanes.

**Virginia Beach Legislation Request:** The City of Virginia Beach has requested that this bill be passed on pages 6 & 7 of their 2010 Requested Code of Virginia Changes.